National Energy Board | Office national de l'énergie

Reasons for Decision

Trans Mountain Pipeline Inc. (formerly Terasen Pipelines (Trans Mountain) Inc.)

Capacity Allocation Procedures

March 2006 to August 2007

Tariffs

Canada

2008-01966/

National Energy Board

Reasons for Decision

In the Matter of

Trans Mountain Pipeline Inc. (formerly Terasen Pipelines (Trans Mountain) Inc.)

CAPACITY ALLOCATION PROCEDURES

March 2006 to August 2007

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Introduction

In 2006 and 2007, in response to apportionment concerns on the Trans Mountain pipeline system, Terasen Pipelines (Trans Mountain) Inc. (now Trans Mountain Pipeline Inc.) submitted a series of applications to the National Energy Board for revisions to the Trans Mountain Tariffs. Four of these applications proposed significant and controversial changes to the capacity allocation procedures on the pipeline system. The Board's decisions on these applications, with reasons, were released 15 March 2006, 12 April 2006, 20 July 2006 and 16 August 2007.

For ease of reference, the Board has amalgamated these four decisions into a single document. To assist the reader, a map of the Trans Mountain pipeline system as a whole (Figure 1) and a more detailed map showing the delivery locations served by the system in the lower mainland of British Columbia and the state of Washington (Figure 2) are included prior to the text of the decisions. The issues considered by Board in each of these decisions and the relevant sections of the *National Energy Board Act* referred to in the decisions can be found in Appendix I and Appendix II respectively. Appendix III lists the Trans Mountain Tariffs that have introduced notable revisions to the capacity allocation procedures on the system since September 2003 when the concept of allocation based on delivery destination was first introduced.

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Abbreviations

Act	*National Energy Board Act*
Astra	Astra Energy Canada Inc.
BP or BP Canada	BP Canada Energy Company
Board	National Energy Board
CAPP	Canadian Association of Petroleum Producers
Chevron Canada	Chevron Canada Limited
Chevron or Chevron Resources	Chevron Canada Resources Ltd.
ConocoPhillips	ConocoPhillips Canada Ltd.
Imperial	Imperial Oil
Kinder Morgan	Kinder Morgan Canada Inc.
Nexen	Nexen Marketing and Nexen Inc.
PSE	Pump Station Expansion
Shell Canada	Shell Canada Limited
Shell Trading	Shell Trading Canada
SEMI or Suncor	Suncor Energy Marketing Inc. or Suncor Energy Inc.
Terasen	Trans Mountain Pipeline Inc.(formerly Terasen Pipelines (Trans Mountain) Inc. and Terasen Inc.)
Tesoro	Tesoro Canada Supply & Distribution Ltd.
m^3	cubic metres
m^3/d	cubic metres per day
bbl	barrel

Glossary

Aframax tanker	marine vessel with a crude oil cargo capacity loaded over the Westridge Dock of up to approximately 87 400 m^3 (550,000 bbls)
barge	marine vessel capable of carrying crude oil cargos up to 12 720 m^3 (80,000 bbls), or the equivalent 430 m^3/d (2,700 bpd)
bid price	the bid on a cents per cubic metre basis that a shipper is willing to pay to win capacity allocated for deliveries over the Westridge Dock
bid value	the total bid (on a cents per cubic metre times volume basis) that a shipper is willing to pay to win capacity allocated for deliveries over the Westridge Dock
confidential agreement	a confidential agreement between Terasen and the four Washington State refineries connected by pipeline to the Trans Mountain pipeline system pipeline governing the allocation of Export Destinations capacity within that category to the four refineries
Destination(s)	category, based on the delivery destination, for allocating a specified portion of the capacity for crude oil and product deliveries on the Trans Mountain pipeline system; categories include Export Destinations, Domestic Destinations and Westridge Dock (Dock)
Domestic Destinations	the capacity allocation category on the Trans Mountain pipeline system for deliveries to pipeline connected facilities in Burnaby British Columbia other than Terasen's Westridge Marine Terminal
Export Destinations	the capacity allocation category on the Trans Mountain pipeline system for deliveries to the four pipeline-connected Washington State refineries
Panamax tanker	marine vessel with a crude oil cargo capacity of up to approximately 55 600 m^3 (350,000 bbls)
partial loop expansion	Phase 1 of the TMX-Anchor Loop Expansion, scheduled to come on stream in April 2008

Premium or bid Premium	an amount bid by Westridge Dock shippers when nominating volumes for delivery over the Westridge Dock that is used to allocate deemed Westridge Dock capacity during months the Dock is in apportionment; the Premium is bid in every month, but only collected in months when the Dock is apportioned
Pump Station Expansion	capacity expansion on Terasen's Trans Mountain pipeline system put into service 1 April 2007
tanker	marine vessel capable of carrying crude oil cargos in excess of 12 720 m^3 (80,000 bbls), or the equivalent 430 m^3/d (2,700 bpd)
TMX-Anchor Loop Expansion	capacity expansion on Terasen's Trans Mountain pipeline system scheduled to come on stream in two phases, in April and November 2008
Westridge Dock or Dock	Terasen's marine crude oil loading facility at its Westridge Marine Terminal in Burnaby, British Columbia; also refers to the capacity allocation category on the Trans Mountain pipeline system for deliveries over the Westridge Dock

Figure 1
Trans Mountain Pipeline System

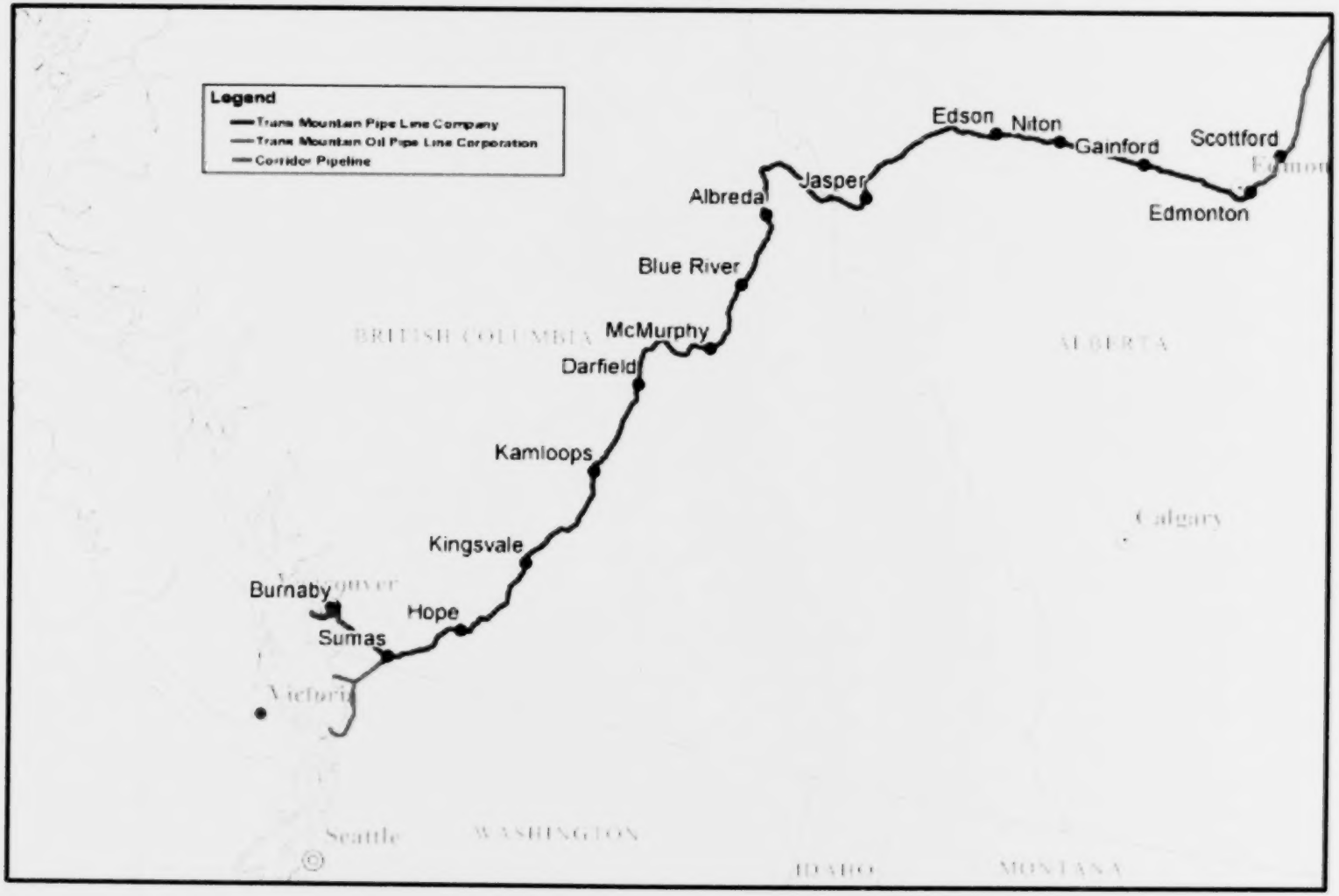
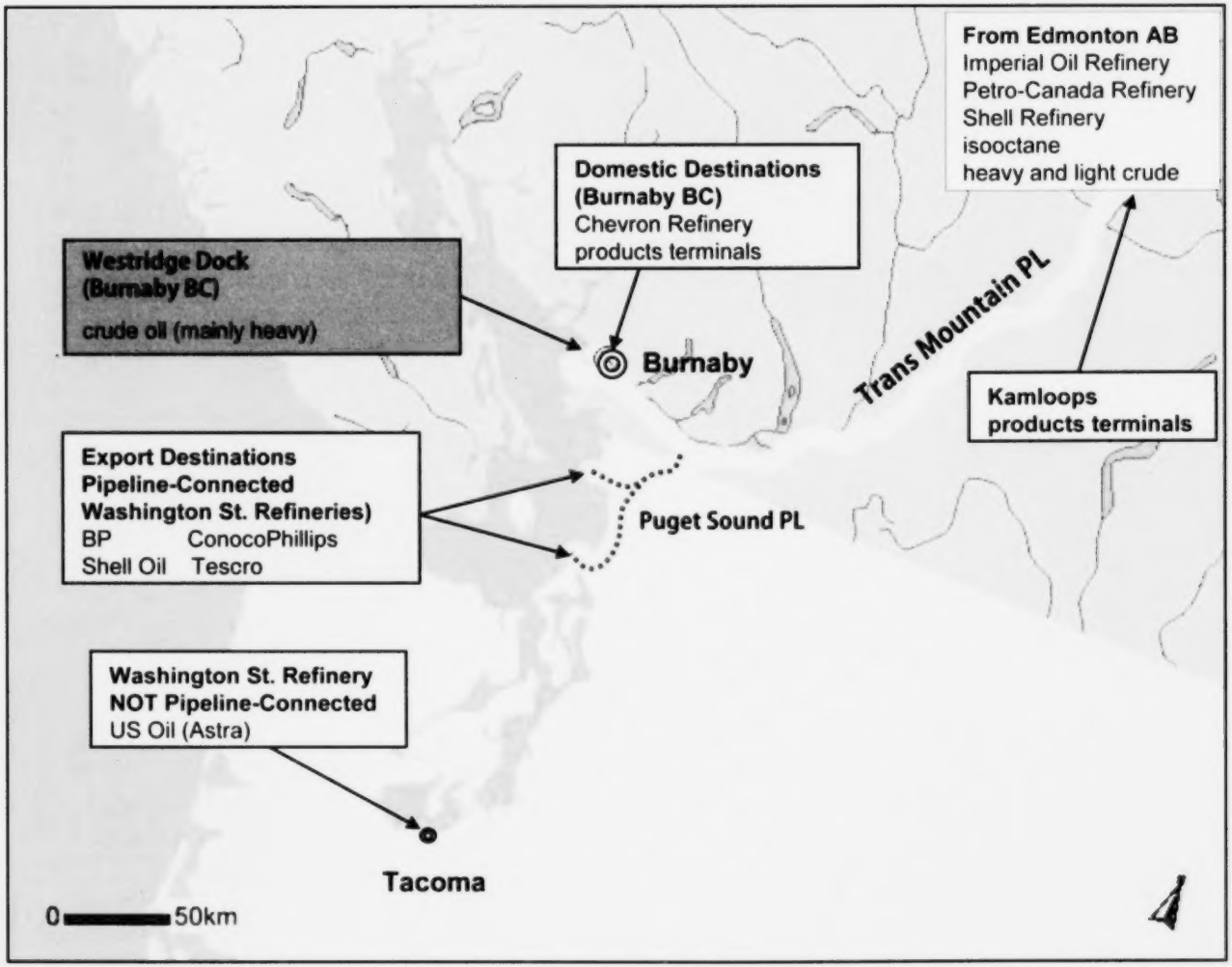


Figure 2
Delivery Locations



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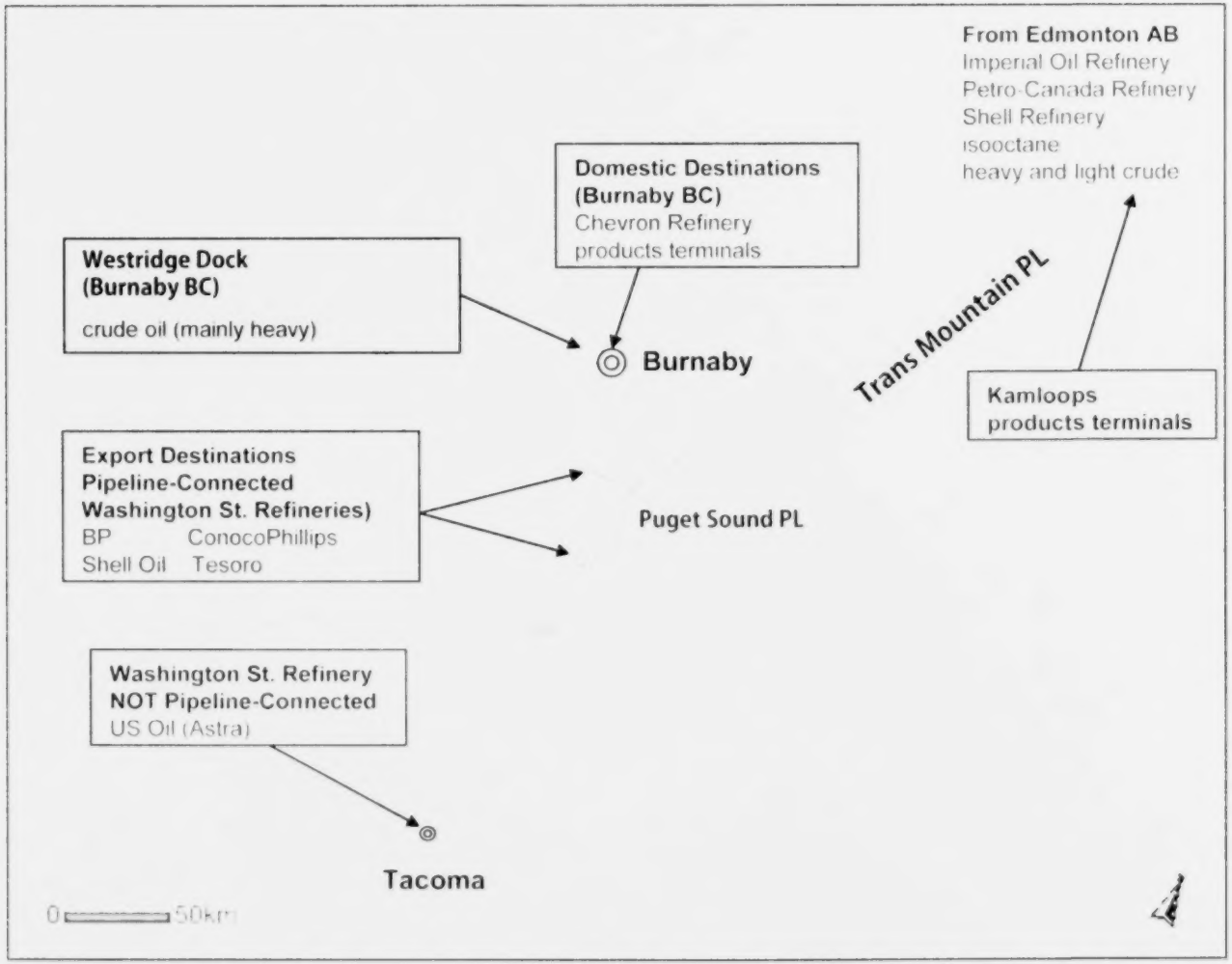

Chapter 1

15 March 2006 Decision

File A-TT-TTC-TTM 01 (4775-T099-1)
15 March 2006

Mr. W. G. Henderson
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Dear Mr. Henderson:

Terasen Pipelines (Trans Mountain) Inc. – Revised Tariff and Rules and Regulations

The National Energy Board is in receipt of a letter from Kinder Morgan Canada Inc. (Kinder Morgan) dated 8 March 2006 with the enclosed filing of Terasen Pipelines (Trans Mountain) Inc. Interim Petroleum Tariff No. 61 and Interim Refined Petroleum Tariff No. RP 29.

The Board notes that in its application, Kinder Morgan identified four changes to the Tariffs and indicated that it is Kinder Morgan's and the Canadian Association of Petroleum Producers' desire to have the new capacity allocation procedures in the proposed Tariffs in place prior to 16 March 2006 so they can be used for April nominations. These changes, summarized below, would be identical in both Tariffs:

1. minor corrections to the dates for Westridge Dock nominations in the Nomination Schedule table in Rule 5 in Tariff 61 (Rule 8 in Tariff RP 29) to correct the respective Nomination Schedule tables in Tariffs 60 and RP 28, which came into effect on 15 February 2006;

2. revisions to the percentage allocations for domestic and export destinations set out in Paragraph 6(b) in Tariff 61 (Paragraph 9(b) in Tariff RP 29), with retention of the capacity allocation for Westridge Dock at 3 600 m^3/d;

3. an amendment to Paragraph 6(b) in Tariff 61 (Paragraph 9(b) in Tariff RP 29) to refer to a confidential agreement between Terasen Pipelines and four Washington State refinery delivery locations; and

4. replacement of Paragraph 6(d) in the current Petroleum Tariff (Paragraph 9(d) in the current Refined Petroleum Tariff) with Rule 7 in Tariff 61 (Rule 10 in Tariff RP 29) to introduce a "Westridge Dock Premium" that would be paid by shippers to acquire

Westridge Dock capacity and used by Terasen Pipelines to allocate Westridge Dock capacity when the dock is over nominated.

On 8 March 2006, the Board issued a letter soliciting comments from shippers and interested persons prior to making its decision on the Tariffs.

Submissions have been received from Astra Energy Company Inc., the Canadian Association of Petroleum Producers, Suncor Energy Marketing Inc., Shell Canada Limited, Shell Trading Canada, Nexen Marketing and Nexen Inc. (Nexen), BP Canada Energy Company (BP Canada), Imperial Oil (Imperial), and the Applicants in the MH-2-2005 proceeding - Chevron Canada Limited, Chevron Standard Limited and Neste Canada Inc.

Eight of the nine submitters supported or did not oppose the changes to the Terasen Pipelines' Tariffs relating to proposed capacity allocation for the domestic, export and Westridge Dock destinations referred to in sections 2 and 3 of Kinder Morgan's filing. Of these eight, three submitters (Nexen, BP Canada and Imperial) expressed concerns with the changes identified in section 4 of Kinder Morgan's filing. All three opposed the implementation of a Westridge Dock Premium and submitted that the Nomination Schedule for Westridge Dock nominations should revert to the pre-15 February 2006 nomination dates. One submitter, Astra, suggested that all Trans Mountain capacity allocation procedures be reviewed by the Board, including the domestic and export destinations allocation procedures, and advised the Board of its objection to the limit placed on Westridge Dock delivery capacity. However, the Board notes that, in expressing its opposition to the three-month trial period for the Westridge Dock Premium, Astra suggested that the more reasonable approach would be for Terasen Pipelines to continue under its current Tariffs.

The Board notes that there is broad consensus around the amendments suggested in sections 1, 2 and 3 of the Kinder Morgan's letter, but has also considered Astra's concerns in this regard. The Board is not persuaded that there is unjust discrimination as Astra asserts against dock shippers by deeming a dock capacity of 3 600 m^3/day for nomination purposes. In the Board's view, the fact that nominations for the dock cannot be apportioned in the same way as nominations on the rest of the system given the characteristics of marine deliveries, which are non-rateable, must be tanker-size and must be coordinated with marine transportation, warrants treating Westridge Dock nominations differently from nominations on the rest of the system. The Board has not been persuaded that there is a need at this time for further debate regarding the amount designated for the dock, especially considering the extensive discussions that have occurred on the apportionment issue over a considerable period of time.

The Board notes the statement in the Tariffs at Paragraph 6(b) of the Petroleum Tariff and Paragraph 9(b) of the Refined Petroleum Tariff that

Export Capacity will be further allocated pursuant to a formula contained in a confidential agreement between the carrier and the Washington State Refiners operating at BP, Cherry Point WA Refinery, ConocoPhillips, Ferndale WA Refinery, Tesoro Petroleum, Anacortes WA Refinery and Shell Oil, Anacortes WA Refinery.

The Board also notes the wording in Paragraphs 6(h) and 9(h) regarding the disposition of excess Export Capacity and Paragraphs 6(g) and 9(g) regarding the allocation of capacity if nominations exceed Export Capacity. The Board accepts these provisions to the extent that only the four shippers referred to in Paragraphs 6(b) and 9(b) have nominated for Export Capacity. However, the Tariffs must make it clear that if any other party nominates to ship to an Export Destination, Terasen Pipelines must accept such nominations, and should all Export Destination nominations exceed the amount allocated for Export Capacity, nominations shall be apportioned by reducing the requested volumes ratably. The Board expects that an amendment to the provisions of Rule 6 regarding export volumes will be required in order to clarify this matter.

After considering the proposed Tariff changes, comments filed in respect of the proposed changes and Kinder Morgan's reply comments, the Board has decided to approve those changes to the Petroleum and Refined Petroleum Tariffs referred to in sections 1, 2 and 3 of Kinder Morgan's 8 March 2006 application subject to the views of the Board expressed above.

Due to the number and complexity of the objections to the Westridge Dock allocation procedures and proposed premium, the Board has decided not to approve the changes to the Tariffs referred to in section 4 of the application at this time. The Board is continuing its examination of the filings and submissions related to this issue and will issue a letter regarding section 4 shortly. The Board suspends the provisions of the Tariff regarding the matters referred to in section 4 of Kinder Morgan's letter, and directs Terasen Pipelines to use the procedures set out in Tariffs 60 and RP28, to allocate capacity to Westridge Dock, with the exception of the revised Nomination Schedule referred to in section 1 of Kinder Morgan's application.

The Board directs Kinder Morgan to file new Tariffs with the Board reflecting these decisions as soon as possible.

Kinder Morgan shall serve a copy of this letter on its shippers and all persons on its interested parties list, as well as all parties to the MH-2-2005 Hearing.

Yours truly,

Michel L. Mantha
Secretary

Chapter 2

12 April 2006 Decision

File ATT-TTC-TTM 01 (4775-T099-1)
12 April 2006

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Dear Messrs. Henderson, Holgate and Langen:

Terasen Pipelines (Trans Mountain) Inc.
Westridge Dock Capacity Allocation Procedure – Reasons for Decision

On 8 March 2006, Kinder Morgan Canada Inc. filed Terasen Pipelines (Trans Mountain) Inc. Interim Petroleum Tariff No. 61 and Interim Refined Petroleum Tariff No. RP 29 with the National Energy Board. The Board approved certain of the changes but decided to consider amendments to the Westridge Dock allocation procedures and proposed Premium separately.

The Board received submissions and heard oral argument on 4 April 2006. Enclosed is the Board's decision with reasons with respect to the proposed allocation procedures and Premium.

Kinder Morgan is to serve a copy of this letter and the enclosed decision on its shippers and all persons on its interested parties list, as well as all parties to the MH-2-2005 Hearing and the Board's hearing of the Tariff application.

Yours truly

Michel L. Mantha
Secretary

Attachment

Terasen Pipelines (Trans Mountain) Inc.
Tariff Revisions – Westridge Dock Capacity Allocation Procedure

Reasons for Decision

2.1 Background

On 8 March 2006, Kinder Morgan Canada Inc. filed Terasen Pipelines (Trans Mountain) Inc. Interim Petroleum Tariff No. 61 and Interim Refined Petroleum Tariff No. RP 29 (Tariffs) with the National Energy Board. The proposed new Tariffs would:

- amend the nomination dates for Westridge Dock nominations for the months of April,
- September, December 2006 and January 2007;
- amend the formula for allocating capacity to Domestic and Export Destinations, and add a reference to a confidential agreement between Terasen Pipelines and four Washington State refineries; and
- introduce a substantial change to the procedure for allocating Westridge Dock capacity.

Capacity on the Trans Mountain pipeline system is allocated by delivery to three destination categories, Domestic Destinations, Export Destinations and the Westridge Dock. Capacity allocated to the Westridge Dock, as agreed to by the majority of Trans Mountain shippers and approved by the Board, is 3 600 m^3/d, which is roughly equivalent to two tanker cargoes. The allocation of capacity to the Dock by lottery, rather than on a *pro rata* basis was first introduced in Petroleum Tariff No. 54 and Refined Petroleum Tariff No. 22, which were filed with the Board and implemented on 14 June 2004. Terasen Pipelines stated that the procedure had the unanimous support of its shippers and that it and its shippers had noted that nominations to and deliveries over the Westridge Dock are unique in nature, whereby nominations to the Dock cannot be apportioned *pro rata* in the same manner as deliveries to other destinations; with respect to deliveries over the Dock, allocation must take place on an "all-or-nothing" basis and not a *pro rata* basis, based on volumes equal to the size of ship cargoes. The Board recognized the unique nature of Westridge Dock deliveries and allowed this change in the allocation procedure.

With regard to the nomination dates for Westridge Dock capacity, Kinder Morgan had filed revised Tariffs on 15 February 2006 that set the date for submitting Westridge Dock nominations to two days in advance of nominations to Domestic and Export Destinations (two-day advance or 48-hour advance). The two-day advance had been introduced to allow those shippers who were unsuccessful in obtaining Dock capacity the opportunity to re-nominate those volumes into other pipeline systems. The proposed change to the nomination dates in the 8 March 2006 filing was to correct dates that had been submitted incorrectly in the 15 February 2006 Tariff filing.

Kinder Morgan stated in its application that the use of the two-day advance removed the ability to verify Westridge supply volumes with upstream connecting carriers. It submitted that this resulted in the pipeline receiving nominations for 37 cargoes for March as compared to the two cargo limit contemplated by the 3 600 m^3/d capacity allotment for Westridge Dock deliveries, and that under the current process, the number of nominated cargoes is expected to increase in

future months. Kinder Morgan submitted that the proposed changes to the Westridge Dock allocation methodology would substantially reduce the numbers of cargoes nominated to the Dock.

Under the proposed procedure for allocating Westridge Dock capacity in the new Tariffs, the volume allocated to the Dock would remain at 3 600 m^3/d, but the procedure of drawing of lots to allocate ship loadings would be removed. Instead, when submitting a volume nomination for the Dock, shippers would also submit an amount, on a cents per cubic metre basis, that they would be willing to pay to acquire Westridge Dock capacity (Westridge Dock Premium or Premium). Terasen Pipelines would then allocate capacity based on a ranking of Premiums from highest to lowest, with the shipper submitting the highest Premium selected first. Shippers who submitted identical Premiums would be further ranked by drawing lots. Provisions related to unutilized Dock capacity, transfers and non-performance penalties would remain the same as in the existing Tariffs.

Kinder Morgan proposed that any Premiums collected would be used to offset capital expenditures related to Dock movements and that, should the Board approve the new procedures, it would apply to the Board for the establishment of a deferral account to properly account for any Premiums received.

Kinder Morgan noted that the new procedures had the support of the majority of Trans Mountain shippers and CAPP, but that the support was not unanimous. As the new procedures represent a substantial change from the current allocation process, Kinder Morgan proposed that the Westridge Dock procedures be implemented for a three-month trial basis.

By letter dated 8 March 2006, the Board solicited comments on the proposed changes in the Tariffs, including whether the revisions regarding the Westridge Dock Premium comply with the common carriage requirements for an oil pipeline.

Submissions were received from the Canadian Association of Petroleum Producers (CAPP); Astra Energy Company Inc.; BP Canada Energy Company; Chevron Canada Limited, Chevron Standard Limited and Neste Canada Inc.; Imperial Oil; Nexen Marketing and Nexen Inc.; Shell Canada Limited (Shell Canada); Shell Trading Canada (Shell Trading) and Suncor Energy Marketing Inc.

After considering the proposed Tariff changes and the comments received, the Board, by letter dated 15 March 2006, approved certain of the matters relating to the revisions to the nomination schedule and to the Domestic and Export Destinations capacity allocations. The Board addressed the question of whether there is unjust discrimination against Dock shippers by deeming a Dock capacity of 3 600 m^3/d for nomination purposes. The Board found that the fact that nominations for the Dock cannot be apportioned in the same way as nominations on the rest of the system given the characteristics of marine deliveries, which are non-rateable, must be tanker-size and must be coordinated with marine transportation, warranted treating Westridge Dock nominations differently from nominations on the rest of the system. However, due to the number and complexity of the objections to the Westridge Dock allocation procedures and Premium, the Board indicated that it was continuing its examination of those matters, suspended the provisions of the Tariffs relating to the Westridge Dock Premium and directed Terasen Pipelines to use the

procedures set out in Tariffs No. 60 and RP No. 28 to allocate capacity to the Westridge Dock, with the exception of the revised Nomination Schedule.

On 16 March 2006, Kinder Morgan filed Interim Petroleum Tariff No. 62 and Interim Refined Petroleum Tariff No. RP 30 incorporating the approved revisions to the Rules. It did not remove or modify the Rules discussing the Westridge Dock Premium, but noted that the previous Westridge Dock procedures contained in Tariffs No. 60 and RP No. 28 would be used for the April 2006 nomination process.

By letter dated 21 March 2006, as amended 22 March 2006, the Board established a procedure that allowed for both written submissions and oral argument for considering the following issues related to the Westridge Dock Premium and capacity allocation methodology:

1. The appropriateness of the Westridge Dock Premium.

2. The implications of the Premium to Terasen Pipelines' common carriage requirements.

3. Whether the date of nominations for the Westridge Dock should remain at two days before nominations for the rest of the system.

4. Whether shippers nominating on the Westridge Dock should be restricted, either by number of cargoes or by volume, and whether the total of the volumes nominated by any shipper should be limited to the capacity allocated to the Westridge Dock.

The Board determined that two of the issues raised by parties, namely the disposition of the proceeds from the Premium and the publication of Premium information, are matters that are best left for discussions among Terasen Pipelines, its shippers and interested persons, should the Premium be approved. Therefore, the Board decided that it would not hear argument on these matters.

Written submissions were received from Chevron Canada Resources Ltd. (Chevron Resources) and ConocoPhillips Canada. Oral argument by Kinder Morgan, CAPP, Astra, BP, Chevron Resources, Imperial Oil and Petro-Canada, Nexen, and Suncor, was heard on Tuesday, 4 April 2006.

2.2 Appropriateness of the Premium

Views of the Parties

Kinder Morgan submitted that the Premium was needed because the current process permits parties who do not intend to utilize common carrier capacity to lock up that capacity for the sole purpose of profiting from the nomination process. It argued that this secondary market is unjust to true shippers. Further, the current process allows capacity brokers to exploit and profit from the nomination process and that it is not in the public interest to permit a common carrier pipeline capacity nomination process to be exploited for profit. Companies who acquire the capacity by luck and resell that capacity to the highest bidder are capturing the value and Kinder Morgan believes that this value should be used to benefit the system. Kinder Morgan indicated

that it would have no concerns should the Board determine that the Premium should be collected only during those months in which apportionment occurs.

The Premium was supported by CAPP, Chevron Canada, ConocoPhillips, Shell Canada Limited, Shell Trading Canada and Suncor.

In its letter of 13 March 2006 and in oral argument, CAPP stated that, under the current Westridge Dock allocation process of drawing lots, brokers are able to win capacity and resell the scarce space at a higher price to a third party who needs to move crude oil. It was CAPP's position that if a Premium is paid to allocate the scarce Dock space, then the associated revenue should flow back to the pipeline system users and not to a third party that is able to win space. This position was supported by Chevron Canada and ConocoPhillips.

CAPP, Chevron Canada, ConocoPhillips and Suncor expressed the view that the proposal would reduce the number of speculative nominations from parties wishing to broker the scarce space. Relying on market-based forces through the proposed Premium bidding mechanism and enabling shippers to use their own judgment about their need and the price they are prepared to pay to access the Dock was considered to be an important aspect in CAPP's decision to support the proposal. Chevron Resources argued that a scarce resource is better allocated if it goes to those shippers who value it more, as opposed to those who are lucky enough to win the draw. In addition, Chevron Resources stated that the proposed Premium would eliminate the possibility of a secondary market which would, in turn, improve the transparency of a bidding or Premium process. ConocoPhillips submitted that it supported the Westridge Dock Premium because a more market based system for allocating the capacity would be driven by the economics in the market place. Suncor argued that with the current draw procedure, system capacity is awarded on an all or nothing basis with the two winners having the ability to broker the capacity for a profit.

Chevron Resources submitted that there is uncertainty in the current procedure of drawing lots. The proposed procedure would give the shipper a means of control over increasing its odds of being the successful bidder. In Suncor's view the proposed Premium is properly considered from the perspective of the shipper and the value that a shipper places upon this capacity should prevail.

The Premium was opposed by Astra, BP, Imperial Oil, Petro-Canada and Nexen.

In opposing the Premium, Astra stated that Dock capacity nominations are driven by arbitrage conditions, which may vary over time, and that even with the proposed Premium, nominations will continue to be driven by those arbitrage conditions. Therefore, the problem of over nominations would not be remedied by the proposed Premium. This position was supported by BP, Imperial Oil, Petro-Canada and Nexen.

Astra submitted that the Premium would add no more certainty to the allocation of the Westridge Dock capacity than the lottery system. Astra stated that the imposition of the Premium introduces artificial market distortions by imposing a financial cost on Dock shippers that would not be imposed on land shippers, and that if it has to pay a Premium, its margins would be reduced relative to other Washington State refineries which are connected to the Trans Mountain Pipeline System, and therefore would not have to pay a Premium for land-based deliveries. In Astra's

view the Dock Premium system is not in the public interest because it does not address the problem perceived by Kinder Morgan, will result in artificial market distortions and does not treat all shippers fairly.

Petro-Canada stated that the proposed trial period demonstrates that the pipeline company and the shippers who support the bidding proposal have little or no idea how effective that process will be to address the perceived mischief, namely the arbitrage by some parties seeking to profit from reassignment of capacity secured by lottery, or what the intended consequences of its implementation might be.

Nexen submitted that it is a value-judgment as to whether shipper interest is being subordinated by the secondary market and should be stamped out. It argued that alleged speculators would still be shipping barrels they own because they have to, whether they buy them from someone else and sell them back or not. In speculating whether the secondary market was unacceptable, Nexen submitted that it was not uncommon. It was Nexen's view that parties in the business of moving oil in an apportioned environment should expect to have available alternatives such as investing in storage and transportation options. Nexen further argued that it is the risk associated with the alternatives and investments that acts on an oversubscription of space. The flipside would be to forgive lack of preparedness and deprive parties who have made those investments of the competitive advantage they have purchased. While Nexen agreed that the alleged randomness of drawing straws is not optimal, it argued that it would be preferable to the pay-for-priority model inherent in the Premium bid system as it is fair and provides equality of opportunity to all shippers.

Views of the Board

The Board considered the appropriateness of the Premium in terms of both economic and allocative efficiencies. The Board agrees that under the lottery system currently used to allocate Westridge Dock capacity, circumstances exist that could allow a secondary market to influence the allocation of scarce capacity to the Dock. While there is no evidence before the Board regarding the existence of a secondary market, the Board is of the view that the circumstances clearly exist under the lottery system which could allow for the development of a secondary market and indeed, for gaming within that system. The Board notes the comments of some parties that there is nothing inherently good or bad about a secondary market. However, the Board is of the view that, where it has allowed for the development of secondary markets, this has been primarily for shippers to dispose of unused capacity, and at the same time, maximize capacity utilization on the pipeline system, which is not the case in the present situation. Further, where secondary markets exist they allow for the market to decide how that capacity will be allocated. In the Board's view, authorizing the Premium would be more consistent with allowing the markets to decide than continuing the lottery.

In the Board's view, the proposed Premium allocation procedure would place control over the allocation of the scarce capacity for Westridge Dock

deliveries more directly in the hands of Trans Mountain shippers who wish to ship volumes to the Dock and are willing to pay a Premium to obtain that capacity, rather than potentially with parties who might win access to that capacity by chance through the lottery system that is currently in place. When determining whether to bid for the Dock capacity, shippers can use their judgement and make a determination based on their economic situation in order to exert some control in bidding to obtain space.

From an economic point of view, the Board notes that under the Premium system, any additional amounts paid by shippers to obtain capacity allocated to the Dock would be paid to Terasen Pipelines and placed in a deferral account to be used for the benefit of Trans Mountain shippers. The Board considers this to be an acceptable means to deal with any Premiums that may be paid and to be preferable to a situation whereby Trans Mountain shippers as a group would not receive any benefit from additional monies being paid to obtain Westridge Dock capacity.

In considering comments from certain intervenors that the Premium system would cause market distortions, the Board is of the view that any potential market distortions resulting from the Premium are unlikely to be any greater than those caused by drawing lots and any secondary market that may develop. Further, the Board notes that Kinder Morgan has applied for this amendment to the Tariff on a trial basis. If there are market distortions, the Board can act swiftly to address those concerns.

After considering both the allocation and economic issues relating to the Premium, the Board is of the view that the proposed Premium is a rational method for allocating capacity for Westridge Dock nominations, and is appropriate, subject to the discussion in the following section relating to common carriage and legislative requirements.

As the Board is of the view that the Premium is a tool for the allocation of Westridge Dock capacity, and not primarily a tolling methodology, the Board considers that there should be no payment required when the Westridge Dock capacity is not apportioned. Therefore, the Board is of the view that the Premium should only be charged during months of apportionment on nominations to the Westridge Dock.

With respect to the disposition of the Premium and the publication of information regarding Premium nominations, the Board reiterates its comments from its letter dated 21 March 2006, that these are matters best left for discussion between Terasen Pipelines, its shippers and interested persons.

2.3 Common Carriage and *National Energy Board Act* Requirements

Views of Parties

Kinder Morgan submitted that as the *National Energy Board Act* does not contain a direct reference to common carriage, the Board has inferred the obligations of a common carrier from common law and from section 67 and subsection 71(1) of the Act. Kinder Morgan and parties supporting the Premium noted that in the MH-4-96[1] Reasons for Decision the Board found that statutory service obligations are relative, rather than absolute, and are therefore based on a test of reasonableness. Thus, the Board has the ability to tailor the obligations of a common carrier to fit unique circumstances. In Kinder Morgan's view, the Westridge Dock Premium would be consistent with Trans Mountain's common carrier obligations given the circumstances currently facing the pipelines and its shippers. Several parties also argued that the test of reasonableness should be applied to ensure constrained capacity is allocated in the most efficient and effective means available.

It was noted by Kinder Morgan and others that section 67 of the Act prohibits "unjust" discrimination. Kinder Morgan, CAPP, Chevron Resources, Suncor and ConocoPhillips noted a number of factors that make Dock shipments different from pipeline shipments. As explained above, Dock-based shipments cannot be reduced on a proportionate basis in the way land-based shipments can. Since Westridge Dock capacity cannot be physically allocated on a completely equitable basis amongst shippers, in these parties' view, transportation over the Dock is a unique circumstance that merits differential treatment. In oral argument, Kinder Morgan noted that the Board has already determined, in a letter dated 19 March 2006, that the Westridge Dock's circumstances warrant treating nominations to it differently than those to the rest of the Trans Mountain pipeline system.

Kinder Morgan argued that the nomination process for the Westridge Dock has become inconsistent with general common carrier principles due to nominations by shippers for speculative purposes and that this is not in the public interest. It submitted that the Premium is consistent with common carrier requirements and is not discriminatory as it affords each shipper an equal opportunity to obtain access to the Dock while minimizing or eliminating the participation of capacity brokers in the nomination process.

According to CAPP, two fundamental themes emerge from the history of common carriage. The first theme is that the common carrier takes all comers; this is reflected in the elements of equality and non-discrimination which are found in the Act. The second theme is that the common carrier should charge a reasonable price, which is reflected in the requirement for just and reasonable tolls and allows a common carriage provider to earn a profit. CAPP noted that, in this case, the Premium would be directed to a deferral account for the benefit of shippers and would not be captured by the pipeline, and therefore, it cannot be said that paying a Premium completely offends the reasonable price doctrine.

CAPP submitted that, where capacity is oversubscribed and the pipeline cannot practically allocate space on a *pro rata* or historical basis, the Westridge Dock Premium is reasonable

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1 MH-4-96 Reasons for Decision, PanCanadian Petroleum Limited, Request for Service, February 1997.

within the context of common carrier obligations. Thus, CAPP argued that the Premium need not be seen as offending common carriage, but if it does, it can be justified as an exception. It noted that the bidding process gives all shippers an equal opportunity to bid based on their economic circumstances.

Suncor submitted that the appropriateness of market-based bidding systems to allocate pipeline services is a well accepted principle that has previously been accepted by the Board, for example in the RH-1-992 Reasons for Decision. It argued that auction-type processes are appropriate, given the allocative efficiencies and the fact that they promote just and reasonable tolls and are not unjustly discriminatory, as required by sections 62 and 67 of the Act.

Parties that opposed the Westridge Dock Premium generally argued that the imposition of a Premium on Dock shippers was unjustly discriminatory and in violation of common carrier requirements. These parties submitted that section 67 of the Act prohibits any unjust discrimination in tolls, services or facilities. In addition, they claimed that Kinder Morgan failed to show that any such discrimination was not unjust, as is required by section 68 of the Act. BP cited sections 62, 67 and 71 of the Act and submitted that an oil pipeline must transport all product offered to it at the same toll, absent compelling or differentiating circumstances. It indicated that, in situations of constrained capacity, the normal rule is *pro rata* apportionment. In its view, it was difficult to see how a bidding system with potentially different Premiums would conform to common carriage principles. BP suggested that any mechanism that would award capacity to those with the deepest pockets was antithetical to the principles of common carriage. It was acknowledged that the drawing of straws was a crude mechanism to allocate capacity, but in BP's view, that method would constitute a lesser violation of the common carrier principles. BP argued that the Board's RH-1-99[2] Decision applied to the pricing of interruptible services and short term firm transportation and did not provide authority for bid pricing of primary capacity.

Astra argued that there is a limit to the flexibility with which a common carrier's obligations can be interpreted. It cited MH-4-96 and claimed that common carrier requirements were not so flexible as to allow detrimental differentiation between shippers in terms of system access. Astra and Nexen submitted that the imposition of a Premium on the Westridge Dock would result in differentiation between land and Dock shippers that is detrimental to Dock shippers as it imposes a cost on Dock shippers that is not imposed on land shippers even though pipeline constraints also exist for those land-based destinations.

Several parties argued that the bidding process for the Westridge Dock would result in a situation where not all shippers to the Dock would be charged equally for services of the same description. Imperial and Petro-Canada suggested that the inherently unique considerations that would go into the formation of bids by shippers will inevitably produce different bids which cannot avoid producing different tolls being charged for effectively, exactly the same service. Nexen, Imperial and Petro-Canada argued that the Premium would result in tolls that are not consistent with section 62 of the Act. Imperial submitted that the Premium would be a marked departure from tolling principles, while Astra and Nexen also argued that the Westridge Dock Premium does not respect the principles of cost-based toll design as the amount of the Premium would have no

2 RH-1-99 Reasons for Decision TransCanada Pipelines Limited, Tariff, April 2000.

relation to the cost of shipping over the Dock which was already accounted for in the Westridge loading charges.

In BP's view, the Premium bid process is a fundamental departure from common carriage principles and any changes should only be made as part of a larger process that considers all of a pipeline's allocation or apportionment procedures. Other parties also suggested that this change should not be made on an ad hoc basis. BP, Nexen, Imperial and Petro-Canada also raised the concern that the approval of a bidding process for scarce capacity may create a precedent for a common carriage pipeline to charge higher rates, particularly when a pipeline is apportioned.

Views of the Board

Although it is common practice to refer to oil pipelines under the Board's jurisdiction as "common carriage pipelines", the *National Energy Board Act* does not define or use this term. However, the statutory embodiment of this common law concept and the duty of pipeline companies for the transmission of oil or gas are set out in section 71 of the Act. The pertinent portion of this section for the purposes of this application states:

> 71. (1) Subject to such exemptions, conditions or regulations as the Board may prescribe, a company operating a pipeline for the transmission of oil shall, according to its powers, without delay and with due care and diligence, receive, transport and deliver all oil offered for transmission by means of its pipeline.

It is clear that when nominations to an oil pipeline exceed its capacity, the pipeline does not have the ability to transport all of the volumes offered to it. In these cases, the Board has provided exemptions from the requirement to ship all oil by approving the inclusion of apportionment or allocation provisions in the Tariffs. The question before the Board with respect to this application is not whether exemptions from the requirement to ship all oil are needed, but rather what the basis should be for the allocation of the scarce capacity on the pipeline system. In the previous section, the Board accepted the appropriateness of the Westridge Dock Premium from an economic and allocative efficiency point of view. However, before deciding whether to approve the Premium, the Board must determine whether a bidding system is permitted under the Act.

The Board considers that when examining this specific exception to the requirements of section 71, it must do so in light of the requirements in section 67, which states:

> 67. A company shall not make any unjust discrimination in tolls, service or facilities against any person or locality.

As has been previously noted by the Board, and argued with respect to this Tariff, it is not all discrimination that is prohibited, but only "unjust"

discrimination. Further, whether there has been unjust discrimination is, pursuant to section 63, a question of fact and a matter for the considered judgment of the Board. Section 63 states:

> 63. The Board may determine, as questions of fact, whether or not traffic is or has been carried under substantially similar circumstances and conditions referred to in section 62, whether in any case a company has or has not complied with the provisions of that section, and whether there has, in any case, been unjust discrimination within the meaning of section 67.

In the Board's view, the first question to be addressed is whether the bidding mechanism for the allocation of the Westridge Dock capacity results in unjust discrimination in service against any person or locality. The Board has already found[3] that because of the characteristics of marine deliveries (namely, that they are non-rateable, must be tankersize and must be coordinated with marine transportation) they cannot be apportioned in the same way as nominations on the rest of the system. Therefore, this warrants treating Westridge Dock nominations differently than nominations on the rest of the pipeline system. The Board finds therefore that there is no unjust discrimination between landbased and Dock-based nominations. Thus, the remaining question to be examined is whether there is unjust discrimination among the shippers to the Dock. Given that all shippers have the opportunity to bid for space under the same circumstances, the Board finds that there is no unjust discrimination in service among shippers to the Dock.

As the applied-for allocation procedure includes a monetary cost, in the Board's view, this would constitute a toll, as that term is defined in section 2 of the Act. Therefore, the next question with respect to section 67 is whether there is unjust discrimination in tolls against a person or locality. In this regard it is also necessary to consider section 62 of the Act to determine whether the bid process should be allowed. Section 62 states:

> 62. All tolls shall be just and reasonable, and shall always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons at the same rate.

In the Board's view, an argument could be made that the tolls are charged equally to all shippers, given that all shippers have an equal opportunity to bid for the service. However, if allowing for biddable tolls means that they are not charged equally, as the actual amount paid may differ, in the Board's view, they can only be justified if the Board finds that the

3 Board Letter – 15 March 2006, to Mr. W.G. Henderson, Vice President, Marketing and Shipper Services, Kinder Morgan Canada Inc., file A-TT-TTC-TTM 01 (4775-T099-1)

circumstances and conditions with respect to the traffic are not substantially similar. In the RH-1-88 Phase II[4] Decision, the Board interpreted the phrase "under substantially similar circumstances and conditions with respect to all traffic of the same description" to require the Board to consider all relevant matters affecting the traffic of the commodity by a pipeline. As stated in that Decision and others, the Board has broad discretion in determining what matters are relevant and what weight should be assigned to each in making its determination.

The Board is of the opinion that relevant considerations in this matter include the fact that the Premium will only apply during times of apportionment; thus, it is primarily a means of allocating capacity to those who value it most. Also, it is open to anyone who desires the Westridge Dock capacity to submit a bid; there is no barrier to entry in this regard. Further, apportionment for Westridge Dock nominations cannot reasonably be done on a *pro rata* basis, given the characteristics of marine transportation; thus, a different methodology is required. Allowing shippers to bid for the service in times of apportionment will provide for a less random means of allocating capacity than drawing lots and affords shippers some means of controlling their opportunity to access the capacity, by formulating their bid to meet their own economic situation. The Board is of the opinion that these are all grounds for finding that the Premium does not offend the provisions of section 62 and that there is no unjust discrimination in tolls as would be prohibited by section 67 of the Act.

In conclusion, the Board is of the view that the Westridge Dock Premium is appropriate, does not contravene sections 62 or 67 of the Act and should therefore be allowed. To the extent that its inclusion in the Tariffs requires an exemption from section 71 of the Act, this is granted.

The Board agrees with those parties who argued that this decision should not be used as a precedent for allowing biddable tolls in other circumstances. The Board acknowledges that biddable tolls have been primarily approved for discretionary services thus far, and has only approved them in this case given the particular facts of this case: the unique circumstances of Dock traffic and how capacity can be allocated; the fact that the Premium will only be charged in times of apportionment; and the fact that they are being approved, not primarily for tolling purposes, but as a means to deal with a service condition which is expected to be relieved at some time in the future when sufficient expansions occur.

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4 RH-1-88 Phase II Reasons for Decision, TransCanada Pipelines Limited, Tolls, June 1989.

2.4 Westridge Dock Nomination Schedule

Views of Parties

Kinder Morgan argued that the 48-hour advance nomination date was instituted with the support of the majority of its shippers and for the purpose of ensuring that shippers who were unsuccessful in obtaining Dock capacity would be able to re-nominate volumes that would otherwise have been shipped via the Dock, to other destinations on the Trans Mountain pipeline system or alternate pipeline systems, without any commercial impacts. It further argued that since the practical operation of the current nomination process, including the 48-hour advance nomination date, results in a secondary market for Dock capacity, it would not support the continued use of the 48-hour advance nomination date in the absence of the Board's approval of the Westridge Dock Premium. This position was fully supported by Chevron Resources.

CAPP, Astra, Imperial and Petro-Canada, Suncor and ConocoPhillips argued for the retention of the two-day advance for Westridge nominations whether or not the Premium is approved. CAPP and Astra noted that the two-day advance was put into effect prior to Kinder Morgan's 8 March 2006 Tariff filing, and that 92 percent of the Trans Mountain shipper members of CAPP had agreed to it, independent of the Premium and prior to the current discussions. Imperial, Petro-Canada and BP also submitted that the two-day advance had broad shipper support.

With regard to the relationship between the two-day advance and the increase in Dock nominations in March 2006 following its implementation, CAPP, Astra and Nexen argued that there was insufficient information available to determine whether there was a causal correlation between the two events. Astra also submitted that it was its understanding that nominations for delivery over the Westridge Dock had dropped to five in April 2006.

Astra, Suncor, Imperial and Petro-Canada argued that the two-day advance nomination date for Westridge Dock is needed to allow Trans Mountain shippers to market their crude oil volumes in the event they are unsuccessful at winning the lottery or Premium bid. Astra submitted that if the two-day advance were eliminated, unsuccessful Dock shippers would be forced to either sell their crude at a discount or shut in operations. It was the view of Imperial and Petro-Canada that the strong desire for shippers to be able to make alternate arrangements, if their respective nominations to the Westridge Dock were not drawn, should prevail over the perceived impact of the two-day advance date on the number of nominations which flows from Terasen Pipeline's inability to adequately verify nominations against system capacities.

CAPP, Astra, Suncor and ConocoPhillips discussed the potential impacts that removing the two-day advance could have on nominations to other pipeline systems. They argued that uncertainty around securing Dock capacity causes producers and shippers to also nominate volumes into other pipelines concurrently, a practice referred to as double nominating; this has a detrimental impact on the entire industry because it exacerbates the level of apportionment on other pipeline systems. CAPP further argued that the advanced nomination date reduces problems created by re-nomination, which occurs when a nomination is changed after it has been submitted to a pipeline. CAPP submitted that re-nomination can result in a fairly significant disruption to a pipeline system and can have a rippling and cascading impact on hundreds of nominations as batch line-ups are adjusted, re-ordered and re-scheduled. ConocoPhillips

submitted that, with or without a Premium, the concept of a two-day prior nomination date for the movement of cargoes across Westridge must be included to allow for an orderly distribution of the volumes that cannot go across the Dock.

BP and Nexen supported returning to a same-day nomination schedule for Westridge Dock nominations. BP submitted that it would appear that the only thing that changed leading up to the proliferation of Westridge Dock nominations was the advanced deadline for Dock nominations. It understood the business reasons for the advanced date, but voiced soft support for reverting back to same-day nominations if the larger problem is the proliferation of Westridge Dock nominations; however, BP submitted that it does not know whether or not that is the problem. Nexen argued that the normal nomination period worked for a long time and that the 48-hour advance was an experiment that had an unforeseen and undesirable outcome. It argued that the risk of not obtaining Westridge Dock capacity acts as a natural check on oversubscription of that space, and that additional time to nominate is less valuable than the control of runaway nominations. Nexen suggested that, to the extent that Kinder Morgan is right and the 48-hour advance nomination does create an increase in nominations, the nomination date should revert to the normal period.

Views of the Board

The Board is mindful of the potential impact that the advanced date for Westridge Dock nominations might have on the number of Dock nominations, but also recognizes the uncertainty around the relationship between the two-day advance and increased Dock nominations. As well, the Board notes the strong shipper support for the two-day advance date, the benefits of the two-day advance to shippers related to the ability to find alternate transportation for unsuccessful Dock nominations, and the potential impact that reverting to a same-day schedule for all Trans Mountain nominations could have on the Trans Mountain pipeline system and other pipeline systems regarding re-nomination and double nominations. The Board is of the view that the benefits of maintaining the two-day advance date for Westridge Dock nominations outweigh the possible benefits related to a reduction in the number of Dock nominations that might result from reverting to a same-day nomination schedule.

The Board finds that the nomination schedule should remain as set out in the current Trans Mountain Tariffs.

2.5 Westridge Dock Nomination Limits

Views of Parties

In letters, dated 13 March 2006, Nexen and BP proposed that shippers be limited to a maximum of two cargoes with the total volume not to exceed the capacity allocated to the Westridge Dock. Given these proposals, the Board added this matter to the list of issues.

Kinder Morgan explained that under the current Westridge Dock nomination process, any single shipper is able to nominate any number of cargoes or fractional cargoes so long as the total volume nominated does not exceed the deemed Dock capacity. These limits are not specified in the Tariffs, but are the established practice of Kinder Morgan. It submitted that it did not understand how limiting the number of cargoes a shipper could nominate would address arbitrage and the secondary capacity market; however, it took no position on whether nominations should be restricted by number of cargoes, so long as any single shipper's nominations do not exceed the deemed Dock capacity.

Aside from CAPP, who argued for no limits of any sort, and Suncor, who argued against limiting the number of nominations but did not discuss total volume nominated, all parties supported imposing some sort of limit so that any one shipper could not nominate more to Westridge Dock than the deemed capacity allocated to the Dock.

Astra supported a limit on the total volume that a shipper can nominate to Westridge Dock in a month, but argued that imposing a two-cargo limit on the number of cargoes is unnecessary and patently unfair to shippers such as Astra who nominate less than a normal tanker load, as they would not be allowed to nominate up to the full deemed Westridge Dock capacity. In oral argument, BP agreed with Astra's position that there should be no limit on cargoes, and Nexen submitted that while it suggested that nominations to the Dock be limited on a principled basis, it did not feel strongly whether the limit was by cargoes or by volume.

No Party commented on whether limits should be included in the Trans Mountain Tariffs.

Views of the Board

The Board notes that no party argued against restricting nominations by any one shipper to the maximum of the deemed Westridge Dock capacity. The Board is of the view that this limitation is reasonable and should continue to apply. The Board notes the argument that imposing a limit on the number of cargoes could potentially impact filling the capacity allocated to the Westridge Dock and could potentially harm a shipper who nominates less than a full normal tanker load. The Board does not see any significant benefit to imposing a limit on the number of cargoes that can be nominated by any one shipper.

The Board finds that no limit should be placed on the number of cargoes that can be shipped by any one shipper, but that the total volume nominated to the Westridge Dock by any one shipper in any one month should not exceed the allocated Westridge Dock capacity. The Board considers that Terasen Pipelines' established practices are sufficient to meet this intent.

Decision

The Board approves the inclusion of the Premium in the Tariff as a means of allocating capacity to the Westridge Dock. However, Kinder Morgan shall revise the Tariffs to provide that, while the Premium may be bid each month, it shall only be charged in months when there is apportionment applied to Westridge Dock nominations.

Kinder Morgan is directed to set up a deferral account for any Premiums received and to discuss the disposition of the proceeds from the Premium and details of the publication of the Premium information with shippers and interested persons. The Board expects that Kinder Morgan will report back to the Board on these discussions and any resolution on these issues.

The Board notes that Kinder Morgan has proposed a three-month trial period for the Premium. The Board expects Kinder Morgan to schedule early discussions with its shippers and interested persons to reach a decision as to whether a request will be made to have the Premium continued after the trial period or whether an alternate method will be proposed for allocating Westridge Dock capacity. The Board directs Kinder Morgan to file its intentions on this matter with the Board by 19 June 2006.

The Board finds that there is no need to change the two-day advance nomination schedule for the Westridge Dock and accepts the Dock nomination limits as they are currently imposed by Terasen Pipelines' practice.

2.6 Disposition

The foregoing constitutes our Reasons for Decision in this matter.

J.S. Bulger
Presiding Member

E. Quarshie
Member

D.L. Dybwad
Member

Calgary, Alberta
11 April 2006

Chapter 3

20 July 2006 Decision

File OF-Tolls-Group1-T099-2006-01 01 (4775-T099-1-5)

20 July 2006

Mr. W. G. Henderson
Vice President, Marketing and Shipper Services
Kinder Morgan Canada Inc.
Suite 2700, 300 – 5th Avenue SW
Calgary, AB T2P 5J2
Facsimile (403) 514-6401

Dear Mr. Henderson:

Response to National Energy Board April 11, 2006 Directions
Terasen Westridge Dock Capacity Allocation Procedure

On 19 June 2006, Kinder Morgan filed a letter in response to the National Energy Board's 11 April 2006 Reason for Decision for Terasen Pipelines (Trans Mountain) Inc. Tariff Revisions relating to the Westridge Dock capacity allocation procedure including the Westridge Dock Premium. In the letter of 19 June 2006, Kinder Morgan made recommendations with respect to the following issues:

1. disposition of the proceeds from the bid Premium;
2. publication of bid Premium information; and
3. continuance of the bid Premium in the Dock capacity allocation procedures.

On 22 June 2006, the Board issued a letter soliciting comments on these issues and whether any further process was required to consider them. The Board received submissions from Chevron Canada Resources Ltd., the Canadian Association of Petroleum Producers, and Suncor Energy Inc. and reply comments from Kinder Morgan. Enclosed is the Board's decision and reasons with respect to these issues.

Kinder Morgan shall serve a copy of this letter and reasons by 24 July 2006 on all Terasen Pipelines Shippers and persons on its Terasen Pipelines interested parties list, as well as all parties to the MH-2-2005 Hearing.

Yours truly,

Michel L. Mantha
Secretary

Attachment

Terasen Pipelines (Trans Mountain) Inc.

Tariff Revisions – Westridge Dock Capacity Allocation Procedure

Reasons for Decision

3.1 Background

On 11 April 2006, the National Energy Board approved Kinder Morgan Canada Inc.'s request for the inclusion of a Westridge Dock Premium (Premium) in the Terasen Pipelines (Trans Mountain) tariff as a means to allocating capacity to the Westridge Dock. In its decision, the Board directed Kinder Morgan to set up a deferral account for any Premiums received and to discuss the disposition of the proceeds from the Premium and details of the publication of the Premium information with shippers and interested persons. The Board noted that Kinder Morgan had proposed a three-month trial period for the Premium and directed Kinder Morgan to file its intentions with the Board by 19 June 2006 with respect to the continuation of the Premium after the trial period or to propose an alternate method for allocating Westridge Dock capacity.

After holding discussions with its shippers, Kinder Morgan filed a letter with the Board dated 19 June 2006 outlining its recommendations for:

- disposition of the proceeds from the Premium
- publication of Premium bid information
- continuance of the Premium in the Dock capacity allocation procedures

Kinder Morgan noted that agreement amongst shippers was not reached on any of these issues, but recommended the following:

1. proceeds from the bid Premiums will be deferred and used to fund general capital improvements;
2. a reporting time lag of 45 days, measured from the last day in the quarter, be used to report the aggregate quarterly results;
3. the extension of the bid Premium Process to the start up of the Pump Station Expansion (PSE), which is scheduled for April 2007; and
4. ongoing dialogue will be maintained with the Shippers to confirm the appropriateness of continuing the Premium methodology.

By letter dated 22 June 2006, the Board established a procedure for written submissions on the Kinder Morgan recommendations. Written submissions were received from Chevron Canada Resources Ltd. (Chevron), the Canadian Association of Petroleum Producers (CAPP), and Suncor Energy Inc (Suncor) with reply comments from Kinder Morgan.

3.2 Disposition of the Premium Proceeds

Views of the Parties

In its letter dated 19 June 2006, Kinder Morgan recommended that the accumulated Premiums be directed to a deferral account on an after tax basis and directed toward general capital improvements.

Chevron stated that the Premiums should be returned to the general revenue pool and returned to all Shippers.

CAPP is of the view that the Premium is analogous to revenues collected from non-performance penalties which have been fully returned to all shippers via a toll reduction in the subsequent year. CAPP further stated that if the Premium proceeds were used to offset capital expenditures, they could potentially be used to offset maintenance capital projects which could benefit the pipeline through increased earnings as opposed to benefiting shippers via a toll reduction.

Suncor stated that it is indifferent as to whether the dock Premiums are allocated to dock improvements or to general capital improvements.

In reply comments dated 5 July 2006, Kinder Morgan indicated that the Chevron and CAPP approach is acceptable. However, Kinder Morgan noted that a number of shippers indicated a preference for a more direct connection between the Premium and facility improvements.

Views of the Board

In its 11 April 2006 decision on the Premium, the Board stated that it is of the view that the Premium is a tool for the allocation of Westridge Dock capacity and not primarily a tolling methodology. The Board is of the view that the Premium is similar to revenues received for non-performance penalties and therefore should be refunded to all shippers as opposed to having it applied to capital improvements. In the Board's view, this is consistent with past Board decisions on integrated pipeline systems.

3.3 Publication of Premium Bid Information

Views of the Parties

Kinder Morgan recommended that the Premiums be reported quarterly, 45 days from the last calendar day in the quarter being reported. The Company noted that this would ensure that cargo volumes would clear the dock at least three weeks prior to reporting.

Chevron submitted that the Premiums received from the bid procedure should be reported in aggregate and no more frequently than bi-annually.

CAPP supports the position made by some shippers that the Premium information should be disclosed on a timely and regular monthly basis, 45 days after the business month's end. In support of its position, CAPP stated that when buyers and sellers negotiate prices, economic theory explains that lack of pricing-related information benefits the buyers (refiners) and disadvantages the sellers (producers).

Suncor's position is that the Premiums received from the bid procedure should be reported in aggregate on a quarterly basis.

Views of the Board

The Board is of the view that markets operate more effectively when all parties have as complete information as possible. The Board has also given consideration to the desires of parties to protect sensitive information. Therefore, the Board is of the view that the Kinder Morgan proposal to publish aggregate bid information on a quarterly basis will provide market information to participants and also protect sensitive information.

3.4 Continuance of the Premium

Views of the Parties

Kinder Morgan recommended and requested Board approval for extending the trial period for the bid Premium until the start-up of the PSE in April 2007.

This position was supported by Chevron, CAPP, and Suncor.

Views of the Board

The Board is aware that the use of the Premium for allocation purposes has been the subject of considerable discussion for many months. The Board is of the view that the capacity allocation will continue to be an issue until expansion on the Trans Mountain system occurs. Therefore, the Board agrees with the Kinder Morgan proposal that the bid Premium process continue until the PSE start-up. This does not prevent parties from reaching agreement and applying to the Board for approval of an alternative, or asking the Board to examine the issue should circumstances change, prior to the PSE start-up.

Decision

The Board directs Kinder Morgan to set up a deferral account for any Premiums received to be refunded to toll payers in the following calendar year.

Kinder Morgan is directed to publish the aggregate bid Premium information on a quarterly basis, 45 days from the last calendar day in the quarter being reported.

The Board approves the extension of the bid Premium process until the PSE start-up. The Board expects Kinder Morgan to file its intentions for any changes to the bid Premium process at least 60 days prior to the PSE start-up. The Board notes that Kinder Morgan stated that ongoing dialogue will be maintained with the Shippers to confirm the appropriateness of continuing the Premium methodology.

Chapter 4

16 August 2007 Decision

File OF-Tolls-Group1-T099-2006-01 02
16 August 2007

Ms. Brenda McClellan
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Dear Ms. McClellan and Mr. Holgate:

Terasen Pipelines (Trans Mountain) Inc., Application for Approval of PROPOSED Tariff No. 69, Dated 13 March 2007

On 13 March 2007, Kinder Morgan Canada Inc., on behalf of Terasen Pipelines (Trans Mountain) Inc., filed two proposed Rules and Regulations Tariffs governing the transportation of petroleum on the Trans Mountain pipeline system, PROPOSED Interim Tariff No. 68 (Tariff No. 68) and PROPOSED Final Tariff No. 69 (Tariff No. 69). Terasen requested approval of Tariff No. 68 on an interim basis to be replaced by Tariff No. 69 on a final basis should it be approved by the Board.

On 15 March 2007, the Board approved Tariff No. 68 on an interim basis effective 16 March 2007. Subsequently the Board allowed for information requests and received submissions and written argument from interested parties on Tariff No. 69. Enclosed is the Board's decision with reasons with respect to this Tariff.

The Board notes that these Reasons are the fourth in a series of recent decisions regarding the capacity allocation procedures on the Trans Mountain pipeline system applications. The previous decisions were made on 15 March, 11 April (issued 12 April) and 20 July, all in 2006. As these decisions are closely related, for ease of reference, the Board has decided to issue these four decisions together in a single blue book document later this year.

Kinder Morgan is to serve a copy of this letter and the enclosed decision on its shippers and all persons on its interested parties list, as well as all parties to Tariff No. 69 written proceeding.

Yours truly,

David Young
Acting Secretary

Terasen Pipelines (Trans Mountain) Inc.
PROPOSED Tariff No. 69

Reasons for Decision

4.1 Introduction

4.1.1 Application

On 13 March 2007, Kinder Morgan Canada Inc., on behalf of Terasen Pipelines (Trans Mountain) Inc. (Terasen)[5], filed two proposed Rules and Regulations Tariffs governing the transportation of petroleum on the Trans Mountain pipeline system, PROPOSED Interim Tariff No. 68 (Tariff No. 68) and PROPOSED Final Tariff No. 69 (Tariff No. 69). Terasen requested:

1. approval of Tariff No. 68 on an interim basis effective 16 March 2007; and

2. directions on a process or procedure to consider Tariff No. 69 for approval on a final basis, to replace interim Tariff No. 68.

The two Tariffs contained revisions to the capacity allocation procedures on the Trans Mountain pipeline system. Terasen submitted that changes were needed to take into consideration the increase in line capacity that would occur with the start-up of Trans Mountain's Pump Station Expansion (PSE)[6] project, scheduled for 1 April 2007.

Terasen submitted that Tariff No. 68 had general support among Trans Mountain shippers. As the first nomination date for April deliveries into the Trans Mountain pipeline system was 16 March 2007, it requested approval of Tariff No. 68 by that date, to remain effective until the Board makes its decision on Tariff No. 69, which included all the amendments to the procedures in Tariff No. 68 and also revised the allocation procedures for nominations for deliveries over the Westridge Dock. The latter proposed revisions had been more contentious during shipper discussions.

Terasen further indicated that it had agreed with its shippers to periodic reviews of the allocation procedures, the first review to take place after three full months of operating experience under the new Tariff provisions, with subsequent reviews every six months thereafter.

Tariff No. 68

By letter dated 15 March 2007, the Board approved Tariff No. 68 on an interim basis, including some minor non-disputed amendments that would increase the allocation to each of the

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5 The Board recognizes that during the course of this proceeding, the name of applicant changed from Terasen Pipelines (Trans Mountain) Inc. to Terasen Inc. and then to Trans Mountain Pipeline Inc. As the application was originally filed by Kinder Morgan Canada Inc., on behalf of Terasen Pipeline (Trans Mountain) Inc. , for ease of reference the name Terasen is used in these Reasons to refer to the applicant.

6 The Pump Station Expansion, approved by the Board in Order XO-T099-15-2005 dated 9 November 2005, and placed in service on 1 April 2007, added incremental capacity of 7 150 m³/day (45,000 bpd) to the Trans Mountain pipeline system based on throughput in the line averaging 15 percent heavy crude oil.

Destinations[7] by approximately one third of the PSE expansion capacity, based on heavy crude oil comprising 15 percent of total pipeline throughput, with a minor adjustment of an additional 1.7 percent to Westridge Dock to allow for four complete vessel loadings over the Dock, three Panamax cargos plus one barge load up to 12 720 m^3 (80,000 bbls). As a result, the capacity allocated to Westridge Dock increased by 2 464 m^3/d (15,500 bpd) to 6 070 m^3/d (38,200 bpd), subject to adjustments for:

i. heavy crude oil nominated to the Dock exceeding 4 210 m^3/d (26,500 bpd);
ii. planned maintenance; and
iii. carry-over deliveries from the previous month.

The two-day advance and bid Premium process remained unchanged from the previous Tariff, except that Dock shippers would not be required to accept an allocation that is less than 92.5 percent of the original nomination. Tariff No. 68 also adjusted the Domestic/Export split of capacity remaining after volumes are allocated to the Dock to 54/46 percent. Apportionment on nominations to Domestic Destinations, when required, would remain *pro rata*. For allocations to the specific Export Destinations identified in the Tariff, the pre-existing confidential agreement[8] governing allocations would remain in place for up to 14 630 m^3/d day (92,050 bpd), the pre-PSE Export Destination capacity. Apportionment on nominations above that volume, if required, would be applied rateably.

Tariff No. 69

Tariff No. 69 included all the changes in Tariff No. 68 plus two significant changes to the Westridge Dock allocation procedures:

(1) Dock capacity would be divided into two subcategories whereby 5 640 m^3/d (35,500 bpd) would be allocated to "tankers" (nominations for volumes greater than 12 720 m^3 (80,000 bbl)), and 430 m^3/d (2,700 bpd) would be allocated to "barges" (nominations for volumes under 12 720 m^3). These allocations would allow for the loading of three tankers and one barge over the Dock.
(2) Vessel loadings would be ranked on the "total bid value" (bid per unit times volume nominated) rather than on the "bid price" (bid per unit), which is how loadings are currently ranked, for allocation purposes when the Dock is over nominated

Tariff No. 69 would require no changes to the allocation procedures for Domestic and Export Destinations relative to Tariff No. 68.

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7 The Board approved the method for allocating capacity on the Trans Mountain system that included the use of three designated Destinations for nomination purposes (Domestic, Export and Westridge Dock) in its 11 April Terasen Pipelines (Trans Mountain) Inc., Westridge Dock Capacity Allocation Procedure – Reasons For Decision, with cover letter dated 12 April 2006, File ATT-TTC-TTM 01 (4775-T099-1), hereinafter referred to as "April 2006 decision".

8 On 15 March 2006, the Board approved the use of a confidential agreement to allocate capacity within the Export Destinations category in Trans Mountain Tariffs to the extent that only the four shippers referred to in the Tariffs have nominated for Export Capacity.

4.1.2 Process

On 15 March 2007, the Board solicited comments on the proposed changes in Tariff No. 69. Comment letters giving full support to Tariff No. 69 were received from the Canadian Association of Petroleum Producers (CAPP) and Suncor Energy Marketing Inc. (SEMI). In addition, conditional support for Tariff No. 69 was submitted by ConocoPhillips Canada Limited. Chevron Resources and Tesoro Canada Supply & Distribution Ltd. indicated that they were not satisfied with the allocations in the Tariff and suggested that further process might be needed if industry negotiations aimed at reaching agreement are not successful. Astra Energy Canada Inc. strongly opposed the proposed capacity allocation procedures. It requested an oral hearing and listed seven issues that it felt should be considered. Terasen replied that, if a proceeding was necessary, a written process would be appropriate.

On 19 April 2007, the Board decided to hold a written proceeding with respect to the following issues:

1. The need for and implications of creating a new barge subcategory.
2. Whether barge shipments should be moved from the Westridge Dock category to the Export Destinations category for capacity allocation purposes.
3. Whether the proposed changes to the capacity allocation procedures in PROPOSED Tariff No. 69 are consistent with the *National Energy Board Act* (Act), notably the common carrier and no unjust discrimination provisions.
4. Whether using the total bid value of the Premium to rank nominations for delivery over the Westridge Dock is consistent with the Act, notably the just and reasonable tolls and no unjust discrimination provisions.

The Board allowed for information requests and written argument. Submissions were received from Astra, CAPP, Chevron, Nexen Marketing, Tesoro, ConocoPhillips and SEMI. Reply argument was filed by Terasen.

4.2 Submissions

Terasen submitted evidence showing that the Trans Mountain pipeline system has been under apportionment on and off in recent years. An update of nominations filed by Terasen on 25 July 2007 substantiated that this situation continues and that both the Dock and the pipeline system as a whole have been subject to apportionment continuously from April 2007 to present.

Terasen indicated that since the allocation of capacity among the Domestic, Export and Dock Destinations categories was instituted in 2005, the Board has consistently recognized the unique characteristics of marine deliveries. It noted that the Board has approved different treatment for the Dock relative to the two land-based categories (Domestic and Export Destinations) as being consistent with the Act and has recognized the need for innovative allocation of capacity among shippers within the Dock category. Terasen stated that the implementation of the Premium in April 2006 had succeeded in eliminating the potential for a secondary market. However, as a result of increased barge movements, the Premium had not fully achieved its purpose aimed at efficiently allocating scarce Dock capacity.

In accordance with the Board's direction in July 2006, Terasen held discussions with its shippers and notified them that it would be seeking Board approval to continue the Premium methodology, to modify the capacity allocation procedures to account for the additional capacity from the start-up of the PSE and to accommodate the increased use of barges across the Dock.

Terasen stated that it believes that the best way to deal with capacity shortfalls is to add new capacity and provided details on the two capacity expansion projects that have been approved by the Board, the PSE and TMX-Anchor Loop expansion[9]. It noted that the PSE came on stream on 1 April 2007 and that the TMX -Anchor Loop capacity is expected to come on stream in two phases, in April 2008 after construction of a partial loop, and in November 2008 after the entire project has been completed.

Terasen stated that system capacity is affected by the percentage of heavy crude oil in the pipeline, and that it was agreed in shipper discussions that the benchmark heavy content to be used for the allocation of capacity to the three Destinations post-PSE would be 15 percent. It indicated that the allocations in Tariffs No. 68 and No. 69 are based on this percentage. Terasen was of the view that this percentage could potentially increase and expected that after the TMX-Anchor Loop expansion, the heavy content in the system would be 20 percent.

Terasen expects that the TMX-Anchor Loop additional capacity will reduce the chronic apportionment that has impacted pipeline operations over the last several years and stated that it is committed to consulting with its shippers to discuss the process for removal or relaxation of the current allocation process prior to start-up of the partial loop. The ultimate goal would be to return to a more open access approach, replacing the current capacity allocation procedures with a *pro rata* apportionment more suitable for situations when chronic apportionment is not an issue.

Terasen stated that each shipper looks at the current arrangements as a balance of the diverse interests on the system. This balance is a delicate one that is currently threatened with dissolution. It submitted that the likely result of a loss of consensus would be a call for a public hearing where "all bets are off" and each shipper pursues its own interests to the maximum extent.

While some parties had differing views or disagreed with the solutions to resolve apportionment issues proposed by Terasen in Tariff No. 69, no party disagreed with Terasen's general synopsis of the current situation and the fact that apportionment is likely to continue on the Trans Mountain pipeline system until new capacity is added.

4.2.1 The Need For and Implications of Creating a New Barge Subcategory

Terasen submitted that the current methodology based on bid price used to rank nominations for loadings over the Dock threatens the efficient use of the Dock in times of apportionment. For example, in December 2006, Dock capacity went unused when, based on bid price, a second

9 Certificate OC-49 was issued by the Board on 30 November 2006 for the TMX-Anchor Loop expansion project following the OH-1-2006 proceeding. The expansion, which is scheduled to be fully on stream by November 2008, is expected to add 47 620 m^3/d (300 000 bpd) of capacity to the Trans Mountain Pipeline system in two phases based on throughput in the line averaging 20 percent heavy crude oil.

Panamax tanker cargo was outbid by a second barge cargo. As a result, the Dock capacity remaining after the bids were accepted was significantly less than a tanker cargo, and was turned down by the three other shippers who had nominated tanker loads. The unused Dock capacity flowed back to the land-based Destinations and therefore, while Dock capacity was not fully utilized, the result of the two barges being accepted was a reduction in land-based and overall system apportionment.

Terasen also indicated that the continued use of the bid price after the implementation of Tariff No. 68 could still result in underutilization of Dock capacity if more than two tanker cargos were nominated and two barge nominations outbid a third tanker nomination. It suggested that even with the additional PSE capacity allocated to the Dock, "gaming"[10] could still result even if the allocation rules were amended to require that the Premium be paid in any month in which nominations to the Dock exceed deemed Dock capacity. It submitted that, whether or not the final allocation results in Dock capacity being fully utilized, this could add impetus for a shipper to ensure they receive full value from their gaming tactics as Dock space is often at a premium and any shipper with an advantage will be inclined to act on such advantage. Terasen suggested that if a shipper were to bid two barge volumes at high Premiums and enter another at a reduced or nil bid, that shipper has the advantage of averaging down their total bid cost while at the same time increasing their chances of receiving a capacity allocation.

Based on the evidence it presented, Terasen considered the use of the bid value to allocate capacity for deliveries to the Westridge Dock, rather than the bid price, to be an effective solution to avoiding underutilization of Dock capacity. However, it recognized that while this would benefit the pipeline system as a whole, it would create a new problem for the barge shipper due to the fact that the capacity of a Panamax tanker is approximately four times that of a barge. The proposed new barge subcategory would mitigate the impacts on the barge shipper that may result from implementing the ranking of loadings at the Dock based on bid value.

In Terasen's view, Astra is likely to be the only party nominating barges across the Dock in the near term. It argued that Astra would benefit from the implementation of the barge subcategory in that it would be guaranteed one barge shipment per month without having to bid a Premium. Astra would be free to ship more than one barge in any month when fewer than two Panamax tankers are nominated, which had occurred in 5 of 14 months between May 2006 and March 2007.

Terasen stated that, with the exception of Astra, Nexen and, to a lesser extent Tesoro, the creation of the barge subcategory was supported or not opposed by Trans Mountain shippers.

Terasen acknowledged that Aframax tankers have been loaded over the Dock and that their cargos averaged 80 300 m^3 (505,000 bbls) and reached a maximum of 88 000 m^3 (585,000 bbls). It also acknowledged that Aframax tankers winning nominations for delivery over the Dock could, in certain circumstances, create similar problems as barges winning nominations with regard to backing out Panamax tankers and creating unused Dock capacity. However, it stated that the barge subcategory would guarantee barge-size cargos at least one

10 "Gaming" was defined as the use of artificially high bids on barge-size cargos to back out a tanker cargo leaving the Dock in a non-apportioned state, thus nullifying the requirement to pay the Premium associated with the high bids.

loading and noted that, should an Aframax tanker back out a Panamax tanker, it would result in a positive impact on the capacity allocated to the barge category through the transfer of capacity under Rule 14.5 of the Tariff.

CAPP, Chevron and, in a joint submission, ConocoPhillips and SEMI, supported the use of the bid value to rank loadings together with the implementation of the barge category as a fair and reasonable compromise. It ensures Dock capacity is allocated efficiently when apportionment conditions arise and accommodates any potential adverse impacts the use of the bid value may have on a barge shipper.

stra was opposed to the barge subcategory if the volume allocated to barges was capped at 430 m^3/d. It suggested that the barge subcategory be removed from the Westridge Dock category and that nominations for barge deliveries be included in nominations to Export Destinations rendering a separate barge subcategory unnecessary. However, should the Board determine that its barge remain in the Dock category, a separate barge subcategory was required in order to mitigate the unjustly discriminatory effects that a total bid value Premium ranking would have on barge shippers.

Tesoro stated that it did not see a need for a new barge subcategory. Marine shipments should be based on prevailing market conditions independent of the particular size.

Nexen also opposed the implementation of the barge subcategory, consistent with its continuing opposition to the Premium bidding process and limiting capacity for deliveries over the Dock. If a new barge subcategory is created, it should be included in the Export Destinations category rather than the Westridge Dock category, and the volume assigned to barges, 430 m^3/d, should remain in the Dock category. The prior determination of deemed Dock capacity was calculated for "discrete vessel size shipments", and barges were not considered. Nexen opposed further erosion of Dock capacity for tanker vessels by the strategic introduction of a new vessel class. Moreover, in its view, carving out a guaranteed barge delivery only exacerbates the problem of backing out large vessels and makes it a virtual certainty that this will happen at any time that a shipper bids for an Aframax cargo.

Terasen replied that much of the Nexen submission deals with whether there should be a Premium and if so whether it should be allocated only to the Dock or to the entire pipeline system. It suggested that these matters have already been dealt with by the Board and are not in issue here. It also noted Nexen's position that the total value bid Premium should be approved if the bid Premium process remains. Terasen did not comment further on Nexen's concerns regarding Aframax cargos.

4.2.2 Whether Barge Shipments Should Be Moved From the Westridge Dock Category to the Export Destinations Category for Capacity Allocation Purposes

Terasen stated that including Astra's barge in the Export Destinations category as an Export Destination would transfer it from the category where it actually receives service and causes operational impacts, into a category where it cannot receive service or cause virtually any operational impact. It submitted that this would create new issues, for example, the potential

impact on Terasen's ability to optimize and prioritize tankage and to schedule Dock loading windows for unforeseen impacts on the loading schedule such as the unpredictable nature of marine shipments caused by weather and other factors. It further submitted that including other tide water shippers in the Exports Destination category would significantly magnify these problems. In Terasen's view, perhaps the most significant impact of including Astra's barges in the Export Destinations category would be that it would likely result in a requirement to completely re-design the existing three-category approach to capacity allocation.

Astra stated that it has long been a shipper on the Trans Mountain system in various cargo lots ranging from barge traffic to ocean-going Panamax and Aframax tankers, and that it is fully experienced in the management of marine transportation issues. It submitted that barge loadings, unlike tanker loadings, could be apportioned rateably and nominations for its Drake's Bay Barge deliveries should be included in nominations to Export Destinations.

Astra noted that in the 14 months since the Drake's Bay Barge began operations in April 2006, it had nominated 22 and shipped 18 barge cargos. It submitted that the proposed barge subcategory and a cap at a single barge load per month would have the effect of reducing Astra's capacity allocations from current levels to one per month unless the Dock was undersubscribed or the balance left over was uneconomic for larger vessels, and that this would impact its ability to meet its U.S. Oil Refinery obligations. In Astra's view, the U.S. Oil Refinery competes with the other Washington State refineries and even though it is not pipeline connected, it has more in common with the Export Destinations category traffic than it does with other Dock traffic. These other refineries do not have to pay a toll premium, whereas Astra estimated the Premium for Dock deliveries was approximately C$6.37/$m^3$ in the first quarter of 2007 and was of the understanding that it was more than 100 percent of the actual toll from Edmonton, Alberta to the Dock in the second quarter. This, in Astra's submission clearly gives other Washington State refineries an economic advantage over its U.S. Oil Refinery. Given these reasons, Astra argued that its barge should be moved to the Export Destinations category.

Astra also suggested its barge traffic should be included in the Export Destinations category because its barge traffic is more like Export Destinations category traffic. For example, unlike Aframax and Panamax tankers which are destined for locations beyond Washington State, its Drake's Bay Barge delivers crude oil to the U.S. Oil Refinery in Washington State which runs Canadian crude oil as a critical source of supply as do the other Washington State refineries, and is in direct competition with the Export Destinations category shippers. Astra further indicated that its U.S. Oil Refinery is geographically located in Washington State, but is the only Washington State refinery excluded from the Export Destinations category.

As well, Astra submitted that the scale logistics of the Drake's Bay Barge allow it to abide with the same apportionment rules as pipeline movements and are more similar to pipeline movements than tanker movements in that the barge has a relatively short transit time (less than 12 hours) and carries relatively small volumes as compared to tankers. Transportation economics and historical lead times are not as much of a factor for Drake's Bay Barge as they are for other marine cargo movements because the barge can be economically loaded at 50 percent of its capacity (6 360 m^3 or 40,000 bbls) as opposed to Panamax tanker that is not economically efficient under 92.5 percent of its capacity (approximately 52 500 m^3 or 330,000 bbls). In addition, according to Astra, the ability to transport a smaller volume than a

Panamax tanker affords better flexibility to fill in the gaps and actually improves overall system efficiency rather than lessening it as submitted by Terasen.

Astra also argued that it should not be excluded from the Export Destinations category simply because it is not pipeline connected. In its view, the definition of what qualifies to fit in under each of the Destination categories is arbitrary and once Terasen has determined the capacity allocation for those categories, how the crude physically moves to that Destination beyond the Edmonton to Darfield, British Columbia segment, which is the pinch point in the system, is not an important distinction.

Astra submitted that its suggestion to move barge shipments to the Export Destinations category was in response to Terasen's efforts to resolve the underutilization of Dock capacity created by barge nominations. Astra argued that Terasen's current procedures for handling tankage optimization and priority scheduling, loading and unforeseen impacts on the loading schedule would not change simply because the barge was moved to the Export Destinations category.

Astra suggested that Terasen's submission that coordination of marine transportation is complicated by barge traffic and its example comparing the loading of a tanker as compared to loading seven barges is misleading and incompatible with its own evidence that five barge shipments in a month is an anomaly. Astra argued that a barge's smaller volume benefits logistics as smaller volumes reduce pressures created by the need to assemble tanker-sized batches and provide some flexibility to accommodate last minute changes in Dock schedules.

Astra submitted that the potential for objections by other Export Destinations category shippers are to be expected as including Astra in the Export Destinations category would mean that the confidential agreement among the current Export Destinations category shippers would no longer apply. However, Astra submitted that the Board should not be influenced by an argument to "not upset the apple cart", especially given the fact that current tariff arrangements allow these shippers to benefit from the existence of a confidential agreement to allocate capacity on a common carriage pipeline.

In Astra's view, the TMX-Anchor Loop would not resolve the problem of chronic apportionment. It found it difficult to see how a 15 percent increase in capacity would materially change system constraints. In its view, the PSE resulted in more complex apportionment rules that have compounded problems, rather than a more open *pro rata* apportionment system. It expected that capacity constraint will continue beyond the 1 ½ years expected by Terasen and that contrary to Terasen's stated intentions, there will be no movement towards a more open nomination process. Absent a sufficient capacity expansion, Astra submitted that the only equitable way to resolve the current apportionment dilemma is to move its barge cargos to the Export Destinations category.

Nexen supported Astra's submission that its Drake's Bay Barge is different from tankers for many of the reasons given by Astra, notably that the unique "all or nothing" characteristic of tanker loadings did not apply. Barges are not tanker-sized and their presence under the Dock category undermines the purpose of the original Dock deemed capacity calculation, which did not contemplate barges.

Nexen stated that to the extent the moving of barges to the Export Destinations category disturbs the confidential formula agreed to by Export shippers, the impact should not override Terasen's obligation to accept new shippers into that category and to ration its capacity rateably in accordance with applicable law and Board direction. To do otherwise would be to indirectly allow the four Export shippers to dictate the operation of the Westridge Dock. It also pointed out that Export shippers derive a benefit from having barges nominated in the Dock category in that when barge nominations bump a tanker nomination, any unfilled Dock allocation is transferred to the Land Destinations, which include the Export Destinations.

Nexen noted that Terasen opposed moving barges to the Export Destinations category based on physical limitations at the Dock; however, the Dock is physically capable of handling more deliveries than are currently allowed. If the Dock was not capable of handling deliveries under both categories, the Premiums should be directed to the Dock to pay for modifications until it can do so.

Terasen replied that Astra unreasonably downplayed the problems that the Dock operator will face if Astra's proposal is accepted. It stated that sliding a barge into any available time slot at the Dock is not a simple matter and that its submissions regarding the difficulties that would result from moving barges to the Export Destinations category should be accepted over those of Astra, since Terasen is familiar with Dock loading and scheduling operations from the perspective of the operator that has to actually deal with the issues on a daily basis. Terasen also submitted that it had nothing to gain by overstating the difficulties.

Terasen also submitted that Astra underrated the effects on the pipeline system and its shippers if the current delicate consensus among shippers regarding capacity allocation to the Domestic, Export and Dock Destinations categories is lost. Terasen does not believe that an immediate threat to the existing capacity allocation process for the pipeline system is warranted at this time, particularly when a broad review is contemplated once the Anchor Loop is in service.

Contrary to Nexen's suggestion, Terasen replied that it did not take the position that Astra had been excluded from the Export Destinations category because it was not a signatory to the Confidential Export Agreement.

4.2.3 Whether the Proposed Changes to the Capacity Allocation Procedures in Tariff No. 69 Are Consistent With the Act, Notably the Common Carrier and No Unjust Discrimination Provisions

Terasen indicated that its comments with respect to the bid value Premium were contained within its discussion of the next issue and confined its comments on this issue to the proposed barge subcategory proposal. Terasen submitted that, in its view, section 62 of the Act is not applicable to the barge subcategory proposal, as the proposal has no monetary cost associated with it. Even if section 62 were applicable, the proposal does not contravene the section.

Terasen argued that the Board is authorized by the Act to exempt Terasen from the common carrier requirements under section 71, as was noted in the Board's April 2006 decision. In Terasen's view, if the barge subcategory proposal is consistent with sections 62 and 67 of the

Act, then it would be an acceptable exemption from the common carrier requirements in section 71.

Terasen acknowledged that the barge subcategory provides a capacity guarantee to barge shippers, which is arguably discriminatory in favour of the barge shipper. However, combined with the use of the bid value to rank Premium bids, it also limits the chances of barges winning additional nominations if three tankers are nominated, thereby discriminating against the barge shipper. However, in Terasen's view, in neither case is this unjust in the circumstances. Barge traffic differs from tankers in terms of cargo capacity, impact on system operations and impact on capacity utilization at the Dock. Barge nominations can back out tankers, resulting in unused Dock capacity in times of apportionment. In terms of efficient use of loading facilities, it is more efficient to load fewer larger vessels than many smaller vessels. For these reasons, particularly in times of apportionment, it is justifiable to treat barges and tankers differently. Accordingly, there is no unjust discrimination by the creation of the barge subcategory.

Astra's first preference was to move barge cargos to the Export Destinations category. Absent this outcome, Astra interpreted the issue as being related to the two proposed changes together, that is, the combined effect of a barge subcategory and the total bid value Premium. In its view the question is whether there is unjust discrimination amongst Dock shippers. The bid value Premium is unjustly discriminatory, as the barge shipper does not have the opportunity to bid for space under similar circumstances and conditions as other Dock shipper. Accordingly, Astra submitted that this warrants treating barge nominations differently. However, given that tanker shippers would not be allowed to nominate in the barge subcategory, the net effect of creating a subcategory is to shield barge nominations from the unjustly discriminatory effects of using the total bid value to rank nominations. Consequently, there would be no unjust discrimination between barge shippers and tanker shippers in this case.

ConocoPhillips and SEMI submitted that the creation of the barge subcategory acknowledges the differences in types of marine traffic, and that in circumstances where limited Dock capacity must be allocated, it is appropriate to take these differences into account. Placing a limit on the number of barge vessels accessing the Dock facility in months of apportionment is not unjustly discriminatory. Limiting the number of Panamax vessels by using the historical level of capacity allocated to the Dock was found to be just and reasonable; limiting the capacity allocation to the barge category based on historical use is also reasonable. The limitation of one barge per month is a compromise and provides a reasonable means for one class of shipper to continue to have access to the Trans Mountain system in times of apportionment, and comports with section 71.

Chevron indicated that the three proposed changes include the division of the incremental PSE capacity, the bid value Premium ranking and the creation of the barge subcategory. In Chevron's view the PSE capacity should be divided equally between the Dock, Domestic and Export Destinations categories, although it is prepared to accept Terasen's minor adjustment to accommodate the new barge subcategory. It submitted that the division of capacity was the result of consensus between shippers and therefore no unjust discrimination would arise. Tesoro submitted essentially the same, and supported the Tariff proposal on the basis that it does not and will not result in any marked deviations from the agreement to equally divide the PSE capacity.

Chevron addressed the bid value Premium as part of the following issue. With respect to the barge subcategory, Chevron indicated that the existing division of capacity is a response to insufficient capacity; a further sub-division is a similar response, and attempts to maximize the efficient use of the available scarce capacity. It submitted that Astra has an advantage in that it essentially will have its own subcategory, not subject to competitive bidding. Although Astra alleges it will be disadvantaged in competing for additional capacity at the Dock, in Chevron's view there is nothing unjust about the apparent advantage and the alleged disadvantage to Astra when looked at together.

CAPP indicated that all shippers had the equal opportunity to nominate volumes to either of the Dock sub-categories and therefore Tariff No. 69 is consistent with the Act.

As outlined above, Nexen opposed the creation of the barge subcategory and is of the view that it is likely to effect unjust discrimination in both access and tolls between shippers. It also argued that the current disposition of Premiums collected is unjustly discriminatory and requires proper consideration. The Premiums collected should be applied to reduce the tolls for the Westridge Dock shippers only.

Nexen also submitted that it is unjustly discriminatory for a shipper who is prepared to accept apportionment at an Export Destination to be excluded from nominating to the Export Destinations category on the basis that it is not a party to a confidential agreement. It results in the barge shippers being required to pay a Premium without sufficient justification. The characteristics of Dock traffic, which the Board considered in determining whether the differential treatment was warranted, and therefore not unjust, do not apply to barge traffic. Consequently, there is no distinguishing feature to warrant the differential treatment of barge shipments, and continued discrimination is unjust under the Act.

As previously mentioned, Terasen replied that it does not take the position that Astra is excluded from the Export Destinations category because it is not a signatory to the confidential agreement. It argued that Tariff No. 69 is consistent with the Act, provides a reasonable solution to Dock capacity allocation issues and has the support of almost every shipper, and should therefore be approved.

4.2.4 Whether Using the Total Value of the Premium To Rank Nominations for Delivery Over the Dock Is Consistent with the Act, Notably the Just and Reasonable Tolls and No Unjust Discrimination Provisions.

Terasen noted that the Board has already recognized the unique characteristics of marine deliveries and has found that the innovative allocation of capacity processes among Dock shippers, such as a lottery process, per barrel Premium bids and the Premium ranking process, comply with both sections 62 and 67 of the Act It submitted that the substitution of bid ranking based on total bid value does not detract from any of the reasons given by the Board when it initially approved the Premium. Terasen argued that its proposal to rank nominations based on total value does not change the characteristics of marine deliveries and should have no impact on the Board's earlier determination that there is no unjust discrimination between land-based and Dock categories.

Terasen also argued that the Board found that there was no unjust discrimination within the Dock category because all shippers could bid in the Premium process. That option remains open under the new proposal as well. The Premium will continue to be applied only during times of apportionment. It is still the case that Dock nominations cannot be reasonably apportioned on a *pro rata* basis given the characteristics of marine deliveries. The new proposal continues to provide a less random means of allocating capacity and will afford shippers some means of controlling their opportunity to access the Dock by formulating their bid to meet their own economic situation. Terasen submitted that it is not unusual for shippers under the current dollars per barrel basis to bid substantially different Premiums. It further submitted that the Board considered this aspect in April 2006 and found it to be compatible with the Act. In Terasen's view, its proposal to rank bids on a total value basis neither alters nor offends any of the factors leading the Board to conclude that the bid Premium is consistent with the Act.

Terasen submitted that the total bid value proposal's potential discriminatory aspect of different effects on vessels depending on their size is the same as the current dollars per barrel mechanism. Under the current Tariff provisions, a smaller vessel shipper could impact a larger vessel shipper by bidding only a penny higher, thereby causing the larger vessel to withdraw. This situation could be viewed as the larger vessel shipper being disadvantaged by the smaller vessel shipper. Under the new provisions, a small vessel shipper could be viewed as being disadvantaged relative to a large vessel shipper in that the Premium paid by a barge shipper, would have to be approximately four times larger than that of a tanker shipper to win additional space.

Terasen argued that its proposal is reasonable and the most appropriate and effective solution. Given the chronic apportionment on Trans Mountain, the potential for underutilized Dock capacity resulting from the current Tariff provisions is unacceptable and would not be tolerated by shippers. It submitted that as barge and tanker traffic are different and impose different system impacts, they can be justifiably treated differently. In Terasen's view, having regard to these factors, any discrimination that may result is not unjust in the toll design sense. Terasen stated that in spite of this, it has attempted to mitigate the effects on smaller vessel shippers, as a reasonable compromise, by allocating capacity at the Dock for one barge.

Chevron supported Terasen's submissions on this issue, indicating that the proposal maximizes the likelihood of full economic utilization of the Dock capacity in times of high demand. ConocoPhillips and SEMI agree with Terasen that the total bid value Premium ranking comports in all material respects with the Board's April 2006 decision, and reflects a reasonable compromise to allow the more efficient use of Dock capacity while maintaining the ability of barge traffic to obtain access. CAPP supported the view of Terasen that the proposal is consistent with the Act.

Nexen submitted that if the Board found that the allocation of Dock capacity by means of a Premium was consistent with the Act, then the total value Premium ranking would also be consistent with the Act. In Nexen's view, it is comparatively more fair and consistent than measuring Premiums on a dollar per barrel basis. It is economically more efficient for tight space to be allocated first to largest vessels such that remaining space can more likely be used by the smaller, and therefore more flexible, barges. In Nexen's view, giving barges one priority

shipment per month, or leaving the *status quo*, makes it significantly more likely that tankers will be prorated and as a result, backed out with consequent inefficiency in Dock space usage.

Tesoro indicated that the Premium is intended to be used to rank nominations and to avoid potential gaming. This is not inconsistent with the just and reasonable toll or unjust discrimination provisions. All Dock shippers are intended to be treated equally and have an equal right to access available capacity based on the bid value of the Premium. The Premium should result in an efficient allocation of pipeline capacity, and if not, Tesoro expects that Terasen would revisit ways to accomplish efficient allocation.

Astra argued that section 62 of the Act must be considered because Terasen's total bid value Premium is a monetary cost or toll, even though the ranking process itself may not directly involve section 62. In Astra's view, the fact that a barge shipper would have to bid its Premium at least four times multiple over the bid of a Panamax tanker shipper is a clear barrier to entry against a barge shipper but not a tanker shipper. Arguments for maximizing Dock utilization neither justify nor ameliorate the barrier to entry imposed on a barge shipper by the total bid value Premium ranking alone. It noted that the capacity constraint on the Trans Mountain system is between Edmonton and Darfield, not downstream, that is, not at the delivery laterals. Therefore, it considered that maximization of one of the delivery laterals is not relevant if the mainline is fully utilized, and is not a basis for discriminatory treatment of shippers receiving service through the same lateral.

Views of the Board

General Principles and Background

The Board notes that the issues surrounding apportionment and how capacity is to be allocated on the Trans Mountain system in times of apportionment are complex and long-standing. Over the last several years, it has become clear that interested parties on this system have been diligent in discussing and negotiating methods of addressing these issues, even though full agreement has not been achieved. The Board appreciates the compromises and the continuing attempts to deal with apportionment issues during this period. The Board is of the view that industry solutions achieved through negotiation are preferred when dealing with sub-optimal situations such as those that exist here. The Board is also of the view that continued negotiations and discussions will be required on these issues, particularly as it is unclear whether the additional capacity resulting from the start-up of the Anchor Loop expansion will eliminate apportionment on the Trans Mountain system. As is evident from this application, continuing adaptations, discussions and negotiation may also be required to deal with unexpected implications or new circumstances arising as a result of the implementation of any tariff.

In making its decision on Terasen's Tariff No. 69, the Board wishes to reiterate certain principles that it expressed in its previous Reasons for Decision with respect to apportionment issues on this system. In its April

2006 reasons, the Board stated the following with respect to the common carriage requirement:

> It is clear that when nominations to an oil pipeline exceed its capacity, the pipeline does not have the ability to transport all of the volumes offered to it. In these cases, the Board has provided exemptions from the requirement to ship all oil by approving the inclusion of apportionment or allocation provisions in the Tariffs. The question before the Board with respect to this application is not whether exemptions from the requirement to ship all oil are needed, but rather what the basis should be for the allocation of the scarce capacity on the pipeline system.[11]

As part of determining the basis for the allocation of scarce capacity, the Board recognized the different characteristics of marine deliveries. In its letter dated 15 March 2006[12], the Board indicated the following:

> In the Board's view, the fact that nominations for the dock cannot be apportioned in the same way as nominations on the rest of the system given the characteristics of marine deliveries, which are non-rateable, must be tanker-size and must be coordinated with marine transportation, warrants treating Westridge Dock nominations differently from nominations on the rest of the system.[13]

In providing its reasons on the appropriateness of the Westridge Dock Premium in the April 2006 decision, the Board discussed some of the objectives of the proposed Premium: the maximization of capacity utilization on the pipeline system, the preference of allowing the markets to decide the allocation of capacity, and the avoidance of the potential for gaming within the system. The replacement of the lottery system with the Westridge Dock Premium was an attempt to achieve those objectives. Also in that decision, the Board noted that the Premium was a tool for the allocation of Westridge Dock capacity, and not primarily a tolling methodology. As a result, the Board found that the Westridge Dock Premium was appropriate from an economic and allocative efficiency perspective.[14]

The Board then considered whether the Premium complied with the Act. After setting out the applicable considerations under the Act, including sections 62, 63, 67, and 71, and the different characteristics of marine

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11 Terasen Pipelines (Trans Mountain) Inc. Reasons for Decision, dated 11 April 2006, p. 10

12 Terasen Pipelines (Trans Mountain) Inc. – Revised Tariff and Rules and Regulations, 15 March 2006, File ATT-TTC-TTM 01 (4775-T099-1)

13 Terasen Pipelines (Trans Mountain) Inc. Reasons for Decision, dated 15 March 2006, p. 2

14 Terasen Pipelines (Trans Mountain) Inc. Reasons for Decision, dated 11 April 2006, p. 10

deliveries, the Board found that there was no unjust discrimination between land-based and Dock-based nominations. The Board further found that there was no unjust discrimination between shippers on the Dock, since "all shippers have the opportunity to bid for space under the same circumstances."[15]

Proposed Tariff No. 69

In considering Tariff No. 69, the Board is considering the allocation of Westridge Dock capacity during times of apportionment, and as a result, the current application involves similar considerations as were dealt with in the spring of 2006. Consequently, in reviewing the proposed Tariff No. 69, the Board conducted a similar analysis, that is, it examined whether the proposed change to the Premium and the barge subcategory set out in the Tariff are appropriate on an economic and allocative efficiency basis, and whether the Tariff complies with the applicable provisions of the Act.

While the questions set out for the parties to address segregated the various aspects of the proposed Tariff, in the Board's view, in determining whether the Tariff should be approved, the proposal must be considered as a whole. This view reflects the interrelationship of the issues in this application and in particular, the fact that in this situation, the proposals were derived from attempts to reach consensus and through the negotiated compromise of parties involved.

Astra's Proposal

Prior to considering whether the proposed Tariff should be approved, the Board needs to consider Astra's request to move its barge shipments to the Export Destinations category, as the Board's decision on this point determines whether further analysis is required on the Tariff.

The Board notes that the allocation of scarce capacity in the Export Destinations category pursuant to a confidential agreement was made in the spring of 2006. It was the result of negotiations among the shippers and Terasen concerning the then-existing issues related to apportionment. However, that consensus is not relevant to the determination whether a *new* shipper should be moved to the Export Destinations category. Indeed, the Board noted in its 15 March 2006 letter, that

> ...the Tariffs must make it clear that if any other party nominates to ship to an Export Destination, Terasen Pipelines must accept such nominations, and should all Export Destination nominations

15 Terasen Pipelines (Trans Mountain) Inc. Reasons for Decision, dated 11 April 2006, p. 10

> exceed the amount allocated for Export Capacity, nominations shall be apportioned by reducing the requested volumes rateably.[16]

The Board is of the view that the potential impact such a move may have on the confidential agreement and the "delicate consensus" is not relevant, and identified other factors that it took into account when determining whether or not Astra's Drake's Bay Barge should be moved to the Export Destinations category for capacity allocation purposes.

First, at issue before the Board is the appropriate means by which scarce capacity should be allocated on the Westridge Dock during times of apportionment. Astra is a shipper on the Westridge Dock and physically uses those facilities to ship crude oil cargos on the Drake's Bay Barge. Artificially removing the barge from the Westridge Dock for the purpose of allocating capacity does not reflect the realities of the physical movement of crude oil. Furthermore, it does not remove from consideration the requirement for the coordination of marine transportation, which is one of the aspects upon which the Board differentiated the Westridge Dock nominations in spring 2006. The extent to which coordination is required for deliveries to the Dock and marine transportation does not need to be determined for the purpose of this decision; the fact is that coordination between deliveries is required on the Dock for marine transportation.

Second, while Astra provided evidence that it could be ratably apportioned, the extent to which it could be apportioned was not without qualification. Astra indicated that the Drake's Bay Barge could be apportioned down to 50 percent. Pipeline-connected destinations, that is the currently existing Domestic and Export Destinations, do not have that qualification - these shippers can be rateably apportioned beyond 50 percent. In the Board's view, this is a significant distinguishing factor. The comments in the previous Board decisions mentioned above that referred to the fact that marine deliveries "must be tanker-sized" reflect the circumstances that were in existence at that time when no barge shipments were being shipped. In the Board's view, the intention inherent in those words, when read in the context of the facts of the day, is that the vessel, whatever size it may be, requires a certain level of utilization in order to make it economic. Astra's shipments using the Drake's Bay Barge fall within that intention - its evidence is that there is a level of apportionment beyond which it would be uneconomic to ship using the barge.

Third, Astra raises a concern with respect to its ability to compete. The Board notes that in times of apportionment, the competitive position of all shippers is impacted; many shippers may not receive the desired supply

16 Terasen Pipelines (Trans Mountain) Inc. Reasons for Decision, dated 15 March 2006, p. 3

and may be required to seek alternative sources of supply or find additional or alternative ways to meet their needs. Chronic apportionment is sub-optimal for everyone. The objective is to determine appropriate means by which to balance these sub-optimal circumstances in a way which is not unjustly discriminatory. This requires looking at the situation as a whole and balancing various interests. While the potential impact on one shipper's competitive position may be a consideration in certain circumstances, the Board is of the view that it should not be a motivating factor in reaching its decision in this case.

In the Board's view, on the facts in this proceeding, the above factors provide sufficient justification for leaving Astra's Drake's Bay Barge shipments in the Westridge Dock Destination category. Accordingly, Astra's request is denied.

Economic and Allocative Efficiency of Tariff No. 69

In its previous decisions, the Board found that the Westridge Dock Premium was appropriate from an economic and allocative efficiency perspective. Unless the further refinement of the variation to using the total bid value to rank nominations and the creation of the barge subcategory impose less economic and allocative efficiency consequences, there is no need to revisit that finding.

One concern raised by parties is that Tariff No. 69 does not address Aframax vessels. Terasen acknowledged that it does not. However, in the Board's view, this is not a reason to deny the Tariff. From an economic and allocative efficiency perspective, the situation is unchanged between the prior Tariff and Tariff No. 69. Although the fact that neither Tariff addresses this issue is not ideal, the Board notes that in the current circumstances, there are certain restrictions concerning the volume that can be loaded on Aframax vessels. In addition, the Board notes Terasen's intention to review the implication of Tariff No. 69 within three months of implementation and at six-month intervals thereafter. The Board further notes, and strongly encourages, Terasen's intention to revisit allocation procedures globally and move to a more open access process once the Anchor Loop expansion is phased in. As a result, the Board is satisfied that any implications resulting from the potential nomination of Aframax vessels in the interim, and going forward post-Anchor Loop expansion, will be addressed when and if Terasen and its Trans Mountain shippers consider it appropriate or necessary to do so.

From an economic and allocative efficiency perspective, the Board is of the view that the total bid value encourages increased use of all available facilities. In times of apportionment, full use of all capacity available in all Destination categories by those who desire it is an important objective. Although unused Dock capacity may be reallocated to the other

Destinations, doing so when there are shippers who desire Dock capacity and are not able to obtain it due to the backing out of tankers is not efficient and does not reflect market principles. Reallocating capacity also does not reflect the creation of the Destination categories, which categories were supported by the majority of shippers and found to be appropriate by the Board.

The creation of a barge subcategory, and the set aside of one guaranteed barge-sized cargo per month (premium-free so long as there is only one barge shipper) may be less economically and allocatively efficient than not creating such a sub-category in that it does not, in and of itself, encourage the fullest use of the Dock facilities. However, when taken in conjunction with the change to a total bid value Premium ranking process, it is a necessary allocative measure to ensure that smaller cargos will have capacity allocated to them. In the Board's view, these two changes together are, on the whole, more economically and allocatively efficient in times of apportionment than continuing with the prior Tariff. Further, the Board notes the concession other land-based shippers have made in the division of the PSE incremental capacity to allow adequate capacity at the Dock to enable the barge subcategory, and is of the view that the market in this case, as reflected by the majority of the shippers, is in agreement with this subcategory, provided it is coupled with the change to the Premium ranking process.

Accordingly, the Board considers that the Tariff No. 69 is appropriate in terms of economic and allocative efficiencies.

Common Carriage and the National Energy Board Act Requirements

In its previous decisions concerning means of allocating scarce capacity on the Trans Mountain pipeline system during times of apportionment, the Board set out a number of comments which continue to be relevant for its consideration of this application. Some of those comments were set out above. In its April 2006 decision, subsequent to determining the Premium bidding system was appropriate from an economic and allocative efficiency point of view, the Board found that it was also in compliance with the Act. Similarly, in determining whether this Tariff should be approved, the Board must consider whether the changes reflected therein are in compliance with the Act.

The Board notes that it previously determined the appropriateness of treating Westridge Dock shippers differently than Export and Domestic Destinations shippers and the bidding system incorporating a Premium ranking process. A review or variance was not sought with respect to those findings. Accordingly, though some parties submitted comments on these issues, those particular findings are not being reviewed in this decision.

The Board notes that section 62 of the Act concerns the justness and reasonableness of the toll. In the Board's view, the toll has not changed from that paid under the prior Tariff. Under the proposed Tariff, the toll will be paid on a bid per unit basis. All shippers over the Dock pay their toll on that basis. All shippers have an equal opportunity to bid for service over the Dock. Accordingly, the Board finds the Tariff complies with section 62.

While it is recognized that there could be differential monetary impacts of the total bid value Premium on barge shippers and tanker shippers, the Board has indicated that the Premium is an allocative tool for scarce capacity and not primarily a tolling methodology. The differential monetary impact may result in discrimination in a shipper's ability to access capacity on the Dock. The question is whether, in the circumstances, such discrimination is unjust falls within the Board's consideration of whether the Tariff complies with section 67 of the Act.

With respect to the total bid value ranking proposal, the Board is of the view that there may be a differential impact on barge shippers compared to tanker shippers. This finding is not seriously countered by any party. In comparison to the position barge shippers had prior to this Tariff, absent a separate barge category, a shipper would be required to nominate approximately four times the premium of a tanker shipper in order to have its barge ranked in priority to a tanker so as to access capacity on the Dock.

However, whether that differential monetary impact contravenes section 67 of the Act is not a question to be considered in the abstract without looking at the entire factual context. This reflects the wording of section 63 of the Act, where it is clear that whether there has been unjust discrimination are questions of fact. When determining whether the Tariff is *unjustly* discriminatory in this case, the Board must take a more global perspective, and look at all impacts of the Tariff.

The Tariff includes mitigation to offset any potential differential impact created by the total bid value premium ranking. This mitigation is the creation of a barge subcategory with guaranteed capacity for one barge per month. This capacity is accessible on a Premium-free basis as long as there is only one barge shipper, which Terasen anticipates will continue to be the case in the near term. This guaranteed capacity is not contingent on whether a barge shipper has otherwise obtained capacity at the Dock, for example, through nominations on the regular nomination dates, through advanced or regular nominations if the Dock is not in apportionment, or through the transfer of unused capacity from other vessel or Destination categories.

Such certainty of capacity and access to facilities without having to bid a premium is a benefit not currently available to tanker shippers on the Dock. Unlike tanker shippers, Astra, as the only current barge shipper, has at least one guaranteed barge shipment, and the opportunity to obtain others at no differential monetary impact, as outlined above.

Nexen argued that the guaranteed capacity is discriminatory to tanker shippers. The Board notes that this is not a result of the Tariff itself, but the result of the fact of that there are a number of tanker shippers but only one barge shipper currently nominating. Other barge shippers are not excluded from nominating for capacity, and the guaranteed capacity is not dedicated to Astra alone. The Board notes that should other barge shippers nominate to the Dock, barge nominations would be ranked in accordance with the total bid value Premium ranking method in the Tariff. However, such ranking would be based on a comparison of barge-to-barge nominations, which, in the Board's view, provides a more equitable ranking methodology than that which would exist using the total bid value Premium ranking without the barge subcategory.

As previously mentioned, the Board must look at the total impact on access to capacity from the Tariff as a whole in determining whether there is unjust discrimination, and whether, to the extent it is necessary to so find, the proposed changes in the Tariff are reasonable exceptions to the common carrier requirements set out in section 71 of the Act.

The Board has considered all comments received and the facts in this case, including the economic and allocative efficiencies, the circumstances in which the differential impact will and will not be felt, and the further mitigation of that impact and potential discrimination of the capacity guarantee associated with the creation of the barge subcategory. In the Board's view, any discrimination to a Dock shipper that results from the imposition of the total bid value Premium ranking and the creation of a barge subcategory with its guaranteed capacity, is justified in the chronic apportionment circumstances of this pipeline, and as such, does not constitute unjust discrimination. The proposed Tariff reflects a reasonable compromise, and an attempt at balancing divergent interests without being unduly burdensome on any particular shipper.

Given the Board's findings that the tolls are just and reasonable under section 62 and that there is no unjust discrimination pursuant to section 67, the Board is of the view that, should it be necessary to make this finding, the allocation methods described in Tariff No. 69 are acceptable exemptions to the common carrier requirements set out by section 71 of the Act.

Decision

In light of the reasons set out above, the Board approves Tariff No.69, as filed.

The Board notes and supports Terasen's commitment for reviewing the implementation of this Tariff at three months after its implementation, and then at six-month intervals thereafter. In addition to these reviews, the Board expects that parties also continue to meet and discuss means by which apportionment on this pipeline may be dealt with through a more open access process, particularly in circumstances where additional capacity is expected to reduce, but may not entirely eliminate, apportionment. Such discussions need not be limited to further refinements to the current Tariff or a piecemeal approach building on past tariffs and historical usage, but may also include whether dealing with scarce capacity issues requires a whole new methodology.

The Board notes the intention for the Tariff to continue until the start-up of the Anchor Loop expansion. Given the fact that past filings dealing with these issues have not had unanimous support, the Board expects Terasen to file any new Tariff sufficiently prior to start-up of the Anchor Loop expansion to allow parties to adequately comment upon it, should that be necessary.

4.3 Disposition

The foregoing constitutes our Reasons for Decision in this matter.

J.S. Bulger
Presiding Member

K. M. Bateman
Member

S.A. Leggett
Member

Calgary, Alberta
16 August 2007

Appendix 1

Abbreviations

Act	*National Energy Board Act*
Board	National Energy Board
CAPP	Canadian Association of Petroleum Producers
ConocoPhillips	ConocoPhillips Canada Ltd.
PSE	Pump Station Expansion
SEMI	Suncor Energy Marketing Inc.
Tariff No. 68	Trans Mountain Pipeline PROPOSED Interim Tariff No. 68 approved by the Board 15 March 2007
Tariff No. 69	Trans Mountain Pipeline PROPOSED Final Tariff No. 69
Terasen	Trans Mountain Pipelines Inc.(formerly Terasen Pipelines (Trans Mountain Inc. and Terasen Inc.)
m^3	cubic metres
m^3/d	cubic metres per day
bbl	barrel
bpd	barrels per day

Appendix 2

Glossary and Definitions

Aframax tanker	marine vessel with a crude oil cargo capacity loaded over the Westridge Dock of up to approximately 87 400 m^3 (550 000 bbls)
barge	marine vessel capable of carrying crude oil cargos up to 12 720 m^3 (80,000 bbls), or the equivalent 430 m^3/d (2,700 bpd)
bid price	the bid on a cents per cubic metre basis that a shipper is willing to pay to win capacity allocated for deliveries over the Westridge Dock
bid value	the total bid (on a cents per cubic metre times volume basis) that a shipper is willing to pay to win capacity allocated for deliveries over the Westridge Dock
confidential agreement	a confidential agreement between Terasen and the four Washington State refineries connected by pipeline to the Trans Mountain pipeline system pipeline governing the allocation of Export Destinations capacity within that category to the four refineries
Destination(s)	category, based on the delivery destination, for allocating a specified portion of the capacity for crude oil and product deliveries on the Trans Mountain pipeline system; categories include Export Destinations, Domestic Destinations and Westridge Dock (Dock)
Domestic Destinations	the capacity allocation category on the Trans Mountain pipeline system for deliveries to pipeline connected facilities in Burnaby British Columbia other than Terasen's Westridge Marine Terminal
Export Destinations	the capacity allocation category on the Trans Mountain pipeline system for deliveries to the four pipeline-connected Washington State refineries
Panamax tanker	marine vessel with a crude oil cargo capacity of up to approximately 55 600 m^3 (350 000 bbls)
partial loop expansion	phase 1 of the TMX-Anchor Loop Expansion, scheduled to come on stream in April 2008

Premium or bid Premium	an amount bid by Westridge Dock shippers when nominating volumes for delivery over the Westridge Dock that is used to allocate deemed Westridge Dock capacity during months the Dock is in apportionment; the Premium is bid in every month, but only collected in months when the Dock is apportioned
Pump Station Expansion	capacity expansion on Terasen's Trans Mountain pipeline system put into service 1 April 2007
tanker	marine vessel capable of carrying crude oil cargos in excess of 12 720 m^3 (80,000 bbls), or the equivalent 430 m^3/d (2,700 bpd)
TMX-Anchor Loop Expansion	capacity expansion on Terasen's Trans Mountain pipeline system scheduled to come on stream in two phases, in April and November 2008
Westridge Dock or Dock	Terasen's marine crude oil loading facility at its Westridge Marine Terminal in Burnaby, British Columbia; also refers to the capacity allocation category on the Trans Mountain pipeline system for deliveries over the Westridge Dock

Appendix 3

Relevant Sections of the *National Energy Board Act*

62. All tolls shall be just and reasonable, and shall always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons at the same rate.

63. The Board may determine, as questions of fact, whether or not traffic is or has been carried under substantially similar circumstances and conditions referred to in section 62, whether in any case a company has or has not complied with the provisions of that section, and whether there has, in any case, been unjust discrimination within the meaning of section 67.

67. A company shall not make any unjust discrimination in tolls, service or facilities against any person or locality.

71. (1) Subject to such exemptions, conditions or regulations as the Board may prescribe, a company operating a pipeline for the transmission of oil shall, according to its powers, without delay and with due care and diligence, receive, transport and deliver all oil offered for transmission by means of its pipeline.

Appendix I

List of Issues

15 March 2006 Decision

1. The appropriateness of the deemed capacity allocation for Westridge Dock nominations.

2. The appropriateness of using a confidential agreement to apportion capacity allocated to Export Destinations.

12 April 2006 Decision

1. The appropriateness of the Westridge Dock Premium.

2. The implications of the Premium to Terasen Pipelines' common carriage requirements.

3. Whether the date of nominations for the Westridge Dock should remain at two days before nominations for the rest of the system.

4. Whether shippers nominating on the Westridge Dock should be restricted, either by number of cargos or by volume.

20 July 2006 Decision

1. Disposition of the proceeds from the bid Premium.

2. Publication of bid Premium information.

3. Continuance of the bid Premium in the Dock capacity allocation procedures.

16 August 2007 Decision

1. The need for and implications of creating a new barge subcategory.

2. Whether barge shipments should be moved from the Westridge Dock category to the Export Destinations category for capacity allocation purposes.

3. Whether the proposed changes to the capacity allocation procedures in PROPOSED Tariff No. 69 are consistent with the *National Energy Board Act* (Act), notably the common carrier and no unjust discrimination provisions.

4. Whether using the total bid value of the Premium to rank nominations for delivery over the Westridge Dock is consistent with the Act, notably the just and reasonable tolls and no unjust discrimination provisions.

Appendix II

Relevant Sections of the *National Energy Board Act*

62. All tolls shall be just and reasonable, and shall always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons at the same rate.

63. The Board may determine, as questions of fact, whether or not traffic is or has been carried under substantially similar circumstances and conditions referred to in section 62, whether in any case a company has or has not complied with the provisions of that section, and whether there has, in any case, been unjust discrimination within the meaning of section 67.

67. A company shall not make any unjust discrimination in tolls, service or facilities against any person or locality.

71. (1) Subject to such exemptions, conditions or regulations as the Board may prescribe, a company operating a pipeline for the transmission of oil shall, according to its powers, without delay and with due care and diligence, receive, transport and deliver all oil offered for transmission by means of its pipeline.

Appendix III

Notable Trans Mountain Tariffs

Date of Filing	Tariff	Notable Revisions
16 September 2003	Tariff No. 52 Refined Petroleum Tariff No. RP 20	introduced separate nomination categories for Dock and land-based destinations - volumes apportioned ratably within each category
28 September 2004	Petroleum Tariff No. 54 Refined Petroleum Tariff No. RP 22	introduced the "drawing of lots" for allocating Dock capacity
17 June 2005	Tariff No. 57 Refined Petroleum Tariff No. 25	introduced 3 nomination categories based on destination (Exports, Domestic and Dock) and introduced deemed volume for Dock allocation
15 February 2006	Petroleum Tariff No. 60 Refined Petroleum Tariff No. RP 28	introduced two-day advance for Dock nominations
8 March 2006	Interim Petroleum Tariff No. 61 Interim Refined Petroleum Tariff No. RP 29	introduced bid Premium for Dock nominations and confidential agreement for apportioning Export Destinations capacity
16 March 2006	Interim Petroleum Tariff No. 62 Interim Refined Petroleum Tariff No. RP 30	revised Tariff provisions regarding Export Destinations allocation as directed in the Board's 15 March 2007 decision
8 March 2007	PROPOSED Tariff No. 66 (Tolls applying on Petroleum and Refined Products) PROPOSED Tariff No. 67 (Rules and Regulations Governing the Transportation of Petroleum)	amalgamated products and crude petroleum into the same Tariff and created separate Tariffs for Tolls and 'Rules and Regulations'
13 March 2007	PROPOSED Interim Tariff No. 69 (Rules and Regulations)	introduced Tanker and Barge sub-categories and replaced bid price with bid value for ranking Dock nominations